No. 13314

United States Court of Appeals

for the Ninth Circuit.

REPUBLIC PICTURES CORPORATION, REPUBLIC PRODUCTIONS, INC., and HOLLYWOOD TELEVISION SERVICE, INC.,

Appellants,

vs.

ROY ROGERS,

Appellee.

Transcript of Record

In Seven Volumes

Volume I

(Pages 1 to 476)

Appeal from the United States District Court for the Southern District of California, Central Division.

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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In the United States District Court, Southern District of California, Central Division

No. 13220-PH

ROY ROGERS,

Plaintiff,

vs.

REPUBLIC PRODUCTIONS, INC., a New York Corporation; HOLLYWOOD TELEVISION SERVICE, INC., a Delaware Corporation; DOE ONE, DOE TWO, DOE THREE, DOE FOUR, DOE FIVE, DOE SIX, DOE SEVEN, DOE EIGHT, DOE NINE, and DOE TEN,

Defendants.

COMPLAINT FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION, AND PERMANENT INJUNCTION, AND FOR DAMAGES

Plaintiff complains of defendants, and each of them, and alleges that:

I.

The plaintiff, Roy Rogers, is a citizen and resident of the County of Los Angeles, State of California.

II.

Plaintiff is informed and believes and therefore alleges that defendant, Republic Productions, Inc., is a corporation duly organized and existing under the laws of the State of New York, and is a citizen of said State, and is duly qualified to do business

in the State of California, and is doing business in North Hollywood, County of Los Angeles, State of California. That for convenience [2*] said defendant will hereafter be referred to as "Republic" or "Defendant Republic."

III.

Plaintiff is informed and believes and therefore alleges that defendant, Hollywood Television Service, Inc., is a corporation duly organized and existing under the laws of the State of Delaware and is a citizen of said State, and is duly qualified to do business in the State of California, and is doing business in North Hollywood, County of Los Angeles, State of California. That said defendant will hereafter for convenience be referred to as "Hollywood Television" or "Defendant Hollywood Television."

IV.

Defendants Doe One, Doe Two, Doe Three, Doe Four, Doe Five, Doe Six, Doe Seven, Doe Eight, Doe Nine, and Doe Ten are citizens of States of the United States other than the State of California, and are agents, employees, associates, assignees or other persons claiming some interest in the subject matter of this action through the Defendant Republic.

V.

The amount in controversy herein exceeds the sum of Three Thousand Dollars, ($3,000.00), exclusive of interest and costs.

*Page numbering appearing at foot of page of original Certified Transcript of Record.

VI.

Plaintiff has been for many years and now is an internationally known motion picture, stage, radio and rodeo star and has achieved great fame and prominence as an actor, singer, rodeo performer and equestrian, and has been for many years and now is well known throughout the United States and many foreign countries as "Roy Rogers." Plaintiff's fame as a western star has been and now is such that he has been for many years and now is known as "King of the Cowboys." Under his name Roy Rogers and as said Roy Rogers, plaintiff has through his performances and ability built up [3] great trust, confidence and esteem for himself in the mind of the public.

VII.

"Trigger" has been for many years and now is the name of the horse used by plaintiff in his profession and the name "Trigger" has been for many years and now is associated in the public mind exclusively with the plaintiff, Roy Rogers.

VIII.

For many years one of the plaintiff's principal businesses has been and it now is the business of licensing the manufacturers or distributors of various products and commodities (other than motion pictures) to use his name and likeness on a product or to use his name, voice and likeness and the name and likeness of Trigger, according to the desires and requirements of the particular manufacturer or

distributor but under the strict control of plaintiff, for the purpose of advertising and selling the product or products of such licensee. Plaintiff's said business of licensing has been for many years and now is producing for him a substantially greater income than he has received in like periods from rendering services in motion picture work. Said licensing business reached such proportions in the calendar year 1950, that plaintiff is informed by his licensees and believes and therefore alleges that gross sales of products (other than motion pictures and exclusive of the food products manufactured by his radio sponsor) bearing the name Roy Rogers or the name of his horse, Trigger, were in excess of Twenty Million Dollars ($20,000,000.00). For brevity and convenience plaintiff will hereinafter refer to all elements of said licensing business as "commercial advertising."

IX.

In said business of licensing the use of his name, voice or likeness and the name or likeness of his horse, Trigger, plaintiff has at all times exercised great care, diligence and discretion and [4] has at no time recommended or endorsed or permitted the use of his name, voice or likeness in connection with any goods or services, except those which the plaintiff believed in good faith to be of good quality, wholesome and suitable for safe purchase and use by the public.

X.

Between 1938, and the 27th day of May, 1951, said period being hereinafter referred to as the "term"

or "term of employment" plaintiff rendered services as the star male performer in approximately 85 motion pictures produced by defendant, Republic. In a majority of said motion pictures plaintiff's horse, Trigger, was also starred or featured. That although during said term, the defendant, Republic, had the right to utilize plaintiff's services in television productions or in the production, exhibition, or transmission of motion pictures by means of television devices, at no time during said term was plaintiff called upon or requested by defendant, Republic, to render any such services. On the contrary, such services as were requested by defendant, Republic, and rendered by plaintiff, were solely in connection with the making of the usual and customary motion pictures which were made for exhibition and display to the public upon payment of a fee or admission charge by members of the viewing public, and were not made nor were plaintiff's services rendered to defendant, Republic, for the purposes of commercial advertising.

XI.

At all times during the said term of his employment plaintiff asserted and exercised exclusive control over, and the exclusive right to receive any and all considerations received from, the use of his name, voice or likeness or the name or likeness of his horse, Trigger, in commercial advertising. Plaintiff further alleges that heretofore whenever anyone, including the defendants herein, has ever desired to use or authorize others to use his name [5] or voice

or likeness or the name or likeness of Trigger in any commercial advertising, said person or persons have always heretofore first requested the consent of plaintiff before making such use.

XII.

In addition to plaintiff's rights in commercial advertising, established by custom and practice during his early relations with the defendant, Republic, by a written Agreement, dated February 28, 1948, plaintiff expressly reserved and defendant, Republic, expressly acknowledged that plaintiff was to reserve and retain to himself the exclusive right to enter into commercial advertising contracts involving the use of plaintiff's name, voice or likeness or the name or likeness of his horse, Trigger, and was to receive the full proceeds from such commercial advertising. Plaintiff is informed by his counsel and believes and therefore alleges that defendant, Republic, by said Agreement, dated February 28, 1948, also impliedly covenanted to act in good faith toward plaintiff and not to do any act which would interfere with or unfairly compete with plaintiff's acknowledged right to use or authorize others to use his name, voice and likeness and the name and likeness of his horse, Trigger, in commercial advertising, and to receive the full proceeds from such commercial advertising.

XIII.

By a letter, dated June 8, 1951, the defendant, Hollywood Television, offered to various advertising agencies and to various television networks and

stations certain of the motion pictures heretofore produced by defendant, Republic, during the term of plaintiff's employment, and starring the plaintiff, Roy Rogers, and his horse, Trigger, for immediate televising for the purposes of commercial advertising. Said defendant, Hollywood Television, offered to license or sell said pictures to anyone in groups of 13, 26 or 52 for commercial advertising purposes and said offer contemplated that the name, voice and likeness of Roy Rogers and the name [6] and likeness of his horse, Trigger, would be regularly, repetitiously and systematically used, broadcast and shown to the viewing and listening public free of charge on television screens for the express and only purpose of selling the product or products of the sponsor of said program; and said offer also contemplated similar systematic and repetitious use in newspapers and other advertising media regularly and customarily used to advertise a sponsor's program and the products advertised thereon. Such regular and systematic use and repetition of the name, voice and likeness of plaintiff with the name and advertising material of the sponsor's product or products will cause plaintiff's name, voice and likeness to be associated in the public mind with said product or products and its effect will be to mislead the public into believing that plaintiff endorses, approves or recommends the said product or products.

XIV.

On Tuesday, June 19, 1951, defendant, Hollywood Television, held a screening in the nature of a "pre-

view" at the studios of defendant, Republic, at North Hollywood, California, at which time it reiterated said offer to sell or license the name, voice or likeness of plaintiff in connection with the commercial advertising of the product or products of the person or persons to be so licensed.

XV.

By a letter, dated June 20, 1951, and delivered to said defendants and their counsel on June 21, 1951, plaintiff demanded that said defendants, Republic and Hollywood Television, forthwith withdraw said offers hereinabove referred to. Said defendants have refused to comply with the demand set forth in plaintiff's said letter and have expressed their intention of continuing to offer and negotiate for the sale or licensing of plaintiff's name, voice and likeness and the name and likeness of his horse, Trigger, in [7] connection with commercial advertising on television.

XVI.

The motion pictures which were produced by defendant, Republic, during the term of plaintiff's employment by defendant, Republic, were not produced for, and in their original form as released to the public were not suitable for telecasting for commercial advertising purposes, and in order to render them suitable for commercial advertising purposes, and pursuant to the plan of defendants to utilize plaintiff's name, voice and likeness and the name and likeness of his horse, Trigger, in connection with commercial advertising, the defendant, Republic, and the defendant, Hollywood

Television, or one of them, have caused or are offering to cause the said motion pictures starring plaintiff and his horse Trigger, to be shortened and abbreviated to a length of only 53½ minutes so as to permit the insertion in a one-hour television program of approximately 6½ minutes of advertising material for the purpose of advertising the product of the sponsor of such television program.

XVII.

Said offers of said defendants, Republic and Hollywood Television, were not made until after plaintiff's term of employment ended and were made at a time when plaintiff was engaged in negotiations for a contract with third parties whereby he would appear on television for the purposes of commercial advertising. Said offers of said defendants were made and are now being made wilfully and in complete disregard of plaintiff's rights and with the knowledge that such offers would and will continue to interfere with and damage plaintiff's profession and commercial advertising business and are a wrongful and malicious threat and attempt to deprive plaintiff of the normal and expected fruits of his commercial advertising business, and are a wilful and malicious attempt to divert normally expected profits from plaintiff to said defendants. Plaintiff further alleges that the actual use of said motion pictures, starring [8] plaintiff and his horse, Trigger, for the purposes of commercial advertising, without the consent of plaintiff, will inflict great and irreparable injury upon plaintiff and will

prevent or substantially hinder the plaintiff's business of licensing his name, voice and likeness for use in connection with commercial advertising and will prevent or hinder him from selling his personal services on television in connection with commercial advertising and will further inflict great and irreparable injury upon plaintiff in that the commercial value of plaintiff's recommendation, endorsement or approval for advertising purposes will be destroyed or substantially diluted. Further great and irreparable injury will be inflicted upon plaintiff if defendants are permitted to follow their present course of conduct, in that plaintiff's name and reputation and the public's trust, confidence and admiration for plaintiff and for his horse, Trigger, will be subjected to jeopardy in that plaintiff's name, voice and likeness and the name and likeness of his horse, Trigger, will be associated and used for the purpose of selling products over the type, quality and character of which plaintiff will have no control.

XVIII.

That the said defendants publicly announced offer and intent to sell, license and permit the use of plaintiff's name, voice and likeness for the purpose of advertising the products of a prospective purchaser, licensee or sponsor, are and will constitute unjust and unfair competition with this plaintiff and a wilful and malicious violation of plaintiff's long acknowledged and well established exclusive right freely to engage in the business of commercial advertising and is inflicting and will continue to

inflict great and irreparable damage upon plaintiff, unless restrained by this Court. [9]

XIX.

By its acquiescence, representations, and conduct over a long period of years, the defendant, Republic, has waived any right or authority it might otherwise have had or claimed to have had, to use or authorize others to use the name, voice or likeness of the plaintiff or the name or likeness of his horse, Trigger, in connection with the advertising of any product save and except the motion pictures produced by said defendant and starring the plaintiff.

XX.

By its acquiescence, representations and conduct over a long period of years, the defendant, Republic, led, encouraged and permitted plaintiff to believe that he had the sole and exclusive right to use and to authorize others to use his name, voice and likeness and the name and likeness of his horse, Trigger, for the purposes of commercial advertising and that said defendant, Republic, made no claim to any such right or authority and plaintiff believed and relied upon said representations, acquiescence and conduct and in reliance thereon has heretofore over a period of many years entered into or authorized others to enter into numerous valuable contracts with third parties, authorizing them to use his name, voice or likeness or the name or likeness of Trigger in connection with either the name of the licensee's product or the advertising thereof,

and plaintiff alleges further that now to permit said defendant to assert any right to use plaintiff's name or likeness or the name or likeness of his horse, Trigger, in connection with the advertising of any product (except the motion pictures starring plaintiff and Trigger and produced by said defendant) would cause plaintiff and his said licensees great, immediate, and irreparable damage, for all of which reasons said defendant, Republic, as well as its subsidiary defendant, Hollywood Television, are and each of them is estopped now to claim or assert any right or authority which they might [10] otherwise have had or claimed to have had with respect to the use of plaintiff's name, voice or likeness or the name or likeness of his horse, Trigger, in connection with the advertising of any product save and except the motion pictures produced by said defendant and starring the plaintiff and his horse, Trigger.

XXI.

Plaintiff is informed and believes and therefore alleges that defendant, Hollywood Television, is a wholly owned subsidiary of and an agent and instrumentality of defendant, Republic, and has at all times had full notice and knowledge of plaintiff's exclusive right to control and receive the fruits of the use of his name, voice and likeness and the name and likeness of his horse, Trigger, in commercial advertising, and likewise had full notice and knowledge of the fact that defendant, Republic, had no right or authority to use or permit others to

use plaintiff's name, voice or likeness or the name and likeness of his horse, Trigger, in commercial advertising, without the specific consent and authority of plaintiff first had and obtained. Plaintiff has never authorized or licensed or consented to the said Hollywood Television's use of his name, voice or likeness or the name and likeness of his horse, Trigger, in commercial advertising, or for any other purpose, nor has he ever authorized, licensed or consented to said defendant's authorizing, licensing or consenting to others so using his name, voice or likeness or the name or likeness of his horse, Trigger.

XXII.

Said defendants, Republic and Hollywood Television, are threatening to consummate a sale or licensing of plaintiff's name, voice and likeness and the name and likeness of his horse, Trigger, for commercial advertising purposes, as soon as possible after Sunday, June 24, 1951, for which reason plaintiff is without any adequate remedy at law and great, immediate and irreparable injury, loss and damage will result to plaintiff unless injunctive relief is promptly granted. [11]

XXIII.

That the above-mentioned threats of defendants, Republic and Hollywood Television, to authorize third persons to use plaintiff's name, voice and likeness and the name and likeness of his horse, Trigger, in commercial advertising, all without the consent of plaintiff and in derogation of his rights,

has already substantially damaged plaintiff in that, as plaintiff is informed and believes and therefore alleges, said threats were a proximate and contributing cause of the failure of plaintiff's radio sponsor to renew plaintiff's radio contract. Said contract ran from August, 1948, to and including mid May, 1951, and plaintiff is informed and believes and therefore alleges that his services thereunder were entirely satisfactory, and that except for said threats by said defendants said radio contract would have been renewed and that he would have continued to receive substantial compensation therefrom. Said threats have also caused other radio and television advertising sponsors to be fearful of the competition inherent in said defendants' offers and have been and now are hindering and interfering with plaintiff's negotiations for a contract or contracts with respect to radio and television, all to plaintiff's damage to date in the sum of $25,000. Said threats of defendants, if permitted to continue, even though not actually carried out, will continue to substantially damage plaintiff in his radio, commercial advertising, and contemplated television business, and in additional amounts not now susceptible of ascertainment.

XXIV.

As hereinabove alleged, the acts of the defendants in threatening to offer and offering to license or permit others to use plaintiff's name, voice and likeness and the name and likeness of his horse, Trigger, in commercial advertising, have been com-

mitted and are being committed wilfully and maliciously and for the purpose of [12] damaging and injuring plaintiff in his profession and lawful business, for which reason plaintiff asks that damages by way of example be assessed against defendant, Republic, in the amount of $50,000 and against defendant, Hollywood Television, in the amount of $25,000 as and for exemplary damages.

Wherefore, plaintiff prays:

(1) That a temporary restraining order issue at once, restraining defendants, Republic Productions, Inc., and Hollywood Television Service, Inc., and each of them, and their respective officers, agents, servants, employees, and attorneys, and all persons in concert or participation with them or any of them, from in any manner using, leasing, selling, licensing or disposing of or permitting others to use, for advertising purposes, the name or voice or likeness of the plaintiff, Roy Rogers, or the name or likeness of his horse, Trigger, or any motion picture or motion pictures in which said name or voice or likeness of Roy Rogers or the name or likeness of his horse, Trigger, appear, except for the limited purpose of advertising said motion picture or motion pictures; and

(2) That a preliminary injunction issue, on motion and hearing, restraining said defendants, Republic Productions, Inc., and Hollywood Television Service, Inc., and each of them, and their respective officers, agents, servants, employees, and attorneys, and all persons in concert or participation with

them or any of them, from committing or permitting said acts and each of them referred to in Paragraph (1) of this prayer, pending the final determination of this cause; and

(3) That upon the final determination of this cause, said defendants, Republic Productions, Inc., and Hollywood Television Service, Inc., and each of them, and their respective officers, agents, servants, employees, and attorneys, and all persons in concert or participation with them or any of them be permanently restrained and enjoined from committing or permitting said acts and each of [13] them referred to in Paragraph (1) of this prayer; and

(4) That the defendants, Republic Productions, Inc., and Hollywood Television Service, Inc., and each of them be required to pay over to plaintiff any and all sums which they have received or shall hereafter receive from the use, sale, lease, licensing or other disposition of the name, voice or likeness of plaintiff, Roy Rogers, or the name or likeness of his horse, Trigger, for commercial advertising purposes, or from the use, sale, lease, licensing or other disposition for commercial advertising purposes, of any motion pictures in which said name, voice or likeness of plaintiff, Roy Rogers, or said name or likeness of said horse, Trigger, appear; and

(5) For damages in the amount of $25,000 and additional damages, by way of example, in the

amount of $50,000 from defendant, Republic Productions, Inc., and $25,000 from defendant, Hollywood Television Service, Inc.; and

(6) That plaintiff have and recover his costs herein incurred; and

(7) For such other and further relief as to the Court may seem just and proper in the premises.

Dated June 22, 1951.

GIBSON, DUNN & CRUTCHER,
FREDERIC H. STURDY,
RICHARD H. WOLFORD,
By /s/ FREDERIC H. STURDY,
Attorneys for Plaintiff.

Duly verified.

Receipt of Copy attached.

[Endorsed]: Filed June 23, 1951. [14]

[Title of District Court and Cause.]

ANSWER OF DEFENDANTS

Defendants Republic Productions, Inc., (hereinafter for convenience referred to as "Productions"), Hollywood Television Service, Inc., (hereinafter for convenience referred to as "Hollywood"), and Republic Pictures Corporation (sued herein as Doe One, and hereinafter for convenience referred to as "Pictures") answer the complaint on file herein as follows:

I.

At all times material herein Pictures has been and is a corporation duly organized and existing under and by virtue of the laws of the State of New York, qualified to transact and transacting business in the State of California and within the Southern District of said state. [16] At all of said times Productions and Hollywood have been and are wholly owned subsidiaries of Pictures.

II.

Deny the allegations contained in Paragraphs IV, XI, XVIII, XIX, XX, XXI and XXIV of the complaint.

III.

Admit that plaintiff has been for many years and now is an internationally known actor of so-called "western" roles in motion pictures and other forms of entertainment and that, since some time subsequent to 1937, he has been and now is known as "Roy Rogers." In that connection defendants allege that said name was adopted by plaintiff at the instance and with the consent of Productions after he had been employed as an actor by Productions, his true name then and for some time thereafter being Leonard Slye; and that the identification of plaintiff in the public mind as Roy Rogers is due to, and has in large part been brought about by, extensive advertising and exploitation of plaintiff, his assumed name and the motion pictures in which he has appeared, carried on by Productions and Pictures at great cost and expense to them, and by the

merit and excellence of the motion pictures produced and distributed by Productions and Pictures in which plaintiff appeared. Except as hereinabove expressly admitted defendants are without information or knowledge sufficient to form a belief as to the truth of the averments of Paragraph VI of the complaint.

IV.

Admit and allege that the name "Trigger" is a name used by plaintiff for several horses which he uses in his business as an actor. Except for such admission defendants are without information or knowledge sufficient to form a belief as to the truth of the averments of Paragraph VII of the complaint.

V.

Defendants are without information or knowledge sufficient [17] to form a belief as to the truth of the averments of Paragraphs VIII and IX of the complaint.

VI.

Admit and allege that on or about October 13, 1937, Productions and plaintiff entered into a contract in writing under and by virtue of which Productions employed plaintiff to render his exclusive services as an actor; and that on or about February 28, 1948, said parties entered into another contract in writing under and by virtue of which Productions employed plaintiff to render his services as an actor. Each of said contracts was amended or supplemented from time to time. True and correct copies of said contracts and the amend-

ments and supplements thereto are attached hereto, marked Exhibits "A," "B," "C," "D" and "E," respectively, and by this reference incorporated herein. The employment created by said contracts ended on or about May 25, 1951. Plaintiff rendered his services as an actor pursuant to the 1937 contract in 63 photoplays and pursuant to the 1948 contract in 18 photoplays. Each of said photoplays and all rights therein and thereto were transferred to Pictures and duly copyrighted under the copyright laws of the United States by Pictures. At all times since Pictures has been and is now the owner of said photoplays, of the copyright thereof, and of all other rights therein and thereto, including the right to exhibit, reproduce and transmit, and to license others to exhibit, reproduce and transmit, any or all of said photoplays in any manner or by any method. Except for the foregoing admissions, defendants deny the allegations of Paragraphs X and XII of the complaint.

VII.

Admit and allege that on or about June 8, 1951, Hollywood offered in writing to various advertising agencies to license certain of the above-mentioned photoplays for exhibition by television. A true and correct copy of one of said offers is attached hereto, [18] marked Exhibit "F" and by this reference incorporated herein. Said offers were all in substantially the same form. Said offers were made with the authority and consent of Pictures and Productions. Except for the foregoing admissions

defendants deny the allegations of Paragraphs XIII and XIV of the complaint.

VIII.

Admit and allege that on or about June 21, 1951, plaintiff demanded that Productions and Hollywood withdraw said offers; that defendants have refused to do so; that defendants intend to offer and negotiate for the licensing of said photoplays for exhibition by television and in any other manner and by any other method in or by which said photoplays may be exhibited, reproduced and transmitted; and that defendants intend to retain, reserve and use and exercise any and all rights in said photoplays which they have. Except for the foregoing admissions, defendants deny the allegations of Paragraphs XV and XXII of the complaint.

IX.

Admit that certain of said photoplays have been or are being shortened so as to be capable of being exhibited in about 53½ minutes. Except for the foregoing admission defendants deny the allegations of Paragraph XVI of the complaint.

X.

Admit that said offers were made after plaintiff's term of employment had ended. Defendants are without information or knowledge sufficient to form a belief as to the truth of the averment that plaintiff was engaged in negotiating for a contract with third parties whereby he would appear on television. Except for the foregoing admission and

allegation of want of information or knowledge, defendants deny the allegations of Paragraph XVII of the complaint.

XI.

Deny that defendants have, or any of them has, made any threats whatever or that any act or statement of defendants, or any [19] of them, has damaged or injured, or will damage or injure, plaintiff in any way or in any amount whatsoever. Except for the foregoing denial, defendants are without information or knowledge sufficient to form a belief as to the truth of the averments of Paragraph XXIII of the complaint.

XII.

The complaint does not state facts sufficient to constitute a claim.

Wherefore, defendants pray judgment that plaintiff take nothing by reason of his said complaint, that said complaint be dismissed on the merits, with defendants' costs incurred herein, and for such other and further relief as to the court may seem proper.

LOEB AND LOEB,
By /s/ HERMAN F. SELVIN,
Attorneys for Defendants.

EXHIBIT A

Republic Productions, Inc.

Agreement executed at North Hollywood, California, October 13, 1937, by and between Republic Productions, Inc., a New York corporation, hereinafter referred to as the "producer," and Leonard Slye, hereinafter referred to as the "artist,"

Witnesseth

For and in consideration of the covenants, conditions and agreements hereinafter contained and set forth, the parties hereto have agreed and do hereby agree as follows:

1. The producer hereby employs the artist to render his exclusive services as herein required for and during the term of this agreement and the artist hereby accepts such employment and agrees to keep and perform all of the duties, obligations and agreements assumed and entered into by him hereunder.

2. The artist agrees that throughout the term hereof he will render the services hereinafter specified, solely and exclusively for and as requested by the producer; that he will render his services as an actor in such roles and in such photoplays and/or other productions as the producer may designate; that he will make personal appearances in motion picture theatres and/or other places of entertainment and/or will render his services as an actor in vaudeville, plays and/or in all other kinds of performances on the speaking stage; that he will render

his services as a radio performer, not only by broadcasting in person, but also by making electrical transcriptions and/or by any other present or future methods or means; that he will render his services as an actor in television productions; and that he will render his services in connection with the broadcasting and/or transmission of his likeness and/or voice by means of television, radio and/or otherwise, whether such broadcasting and/or transmission be either directly or indirectly in connection with or independent of photoplays. The artist further agrees that he will promptly and faithfully comply with all reasonable instructions, directions, requests, rules and regulations made or issued by the producer in connection with the services to be performed by the artist hereunder; and that he will perform and render his services hereunder conscientiously and to the full limit of his ability and as instructed by the producer at all times and wherever required or desired by the producer. The term "photoplays" as used in this agreement shall be deemed to include, but not be limited to, motion picture productions produced and/or exhibited and/or transmitted with sound and voice recording, reproducing and/or transmitting devices, television, radio devices and all other improvements and devices which are now or hereafter may be used in connection with the production and/or exhibition and/or transmission of any present or future kind of motion picture productions.

3. The artist further agrees that during the term hereof he will not render his services as an actor, or pose, act, appear, write, direct or render any other services in any way connected with motion pictures or photoplays, nor will he render any services of any kind or character whatsoever, in any way connected with dramatic, theatrical, musical, vaudeville, radio, television or other productions, shows, performances and/or entertainment, nor will he render any other similar services to or for himself, or to or for any person, firm or corporation other than the producer, without the written consent of the producer first had and obtained. The artist further agrees that he will not consent to nor permit any other person to advertise, announce or make known, directly or indirectly, by paid advertisements, press notices, or otherwise, that he has contracted to do or perform any act or services contrary to the terms of this agreement. The producer shall have the right to institute any legal proceedings, in the name of the artist or otherwise, to prevent such acts, or any of them.

4. The artist expressly gives and grants to the producer the sole and exclusive right to photograph and/or otherwise reproduce any and all of his acts, poses, plays and appearances of any and all kinds during the term hereof, and to record his voice and all instrumental, musical and other sound effects produced by him, and to reproduce and/or transmit the same, either separately or in conjunction with such acts, poses, plays and appearances, as the

producer may desire; and further gives and grants to the producer solely and exclusively all rights of every kind and character whatsoever in and to the same, or any of them, perpetually, including as well the perpetual right to use the name of the artist and pictures or other reproductions of the artist's physical likeness, and recordations and reproductions of the artist's voice, in connection with the advertising and exploitation thereof, as well as in connection with the advertising and/or exploitation of any other services which may be required of the artist hereunder. The producer shall have the right to "dub" the voice of the artist and all instrumental, musical and/or other sound effects to be produced by the artist to such extent as may be desired by the producer, such dubbing of the artist's voice to be in English and/or in any other language or languages designated or desired by the producer. The producer shall also have the right to use a "double" for the acts, poses, plays and appearances of the artist to such extent as may be desired by the producer. The artist does also hereby grant to the producer, during the term hereof, the sole and exclusive right to make use of, and to allow others to make use of, his name for advertising, commercial and/or publicity purposes (other than in connection with the acts, poses, plays and appearances of the artist hereunder), as well as the sole and exclusive right to make use of and distribute, and to allow others to make use of and distribute, his pictures, photographs or other reproductions of his physical likeness and of his voice

for like purposes. The artist shall at no time during said term grant the right to, authorize or willingly permit any person, firm or corporation other than the producer to make use of his name or to make use of or distribute his pictures, photographs or other reproductions of his physical likeness or of his voice, and authorizes the producer, in the name of the artist or otherwise, to institute any proper legal proceedings to prevent such acts, or any of them.

5. The artist agrees to conduct himself with due regard to public conventions and morals, and agrees that he will not do or commit any act or thing that will tend to degrade him in society or bring him into public hatred, contempt, scorn or ridicule, or that will tend to shock, insult or offend the community or ridicule public morals or decency, or prejudice the producer or the motion picture, theatrical or radio industry in general.

6. The artist hereby expressly gives and grants to the producer the right to lend the services of the artist to any other person or persons, in any capacity in which the artist is required to render his services hereunder, upon the distinct understanding and condition, however, that this contract shall, nevertheless, continue in full force and effect and that the artist shall not be required to do any act or perform any services contrary to the provisions of this agreement. Any breach by any such person, however, of any of the terms of this [21] agreement shall not constitute a breach by the producer of its

obligations or covenants under this agreement, nor shall the artist have the right to terminate this agreement by reason of any such breach by any such person, but the artist, at his option, in the event of such breach by any such person, shall be released from the obligation to render further services to such person. In the event that the artist is required to render services for any other person or persons as hereinabove provided, he agrees to render the same to the best of his ability. Should the services of the artist be loaned to any other person or persons hereunder, such other person or persons, at the option of the producer, shall be entitled to all or any of the advertising and other rights in connection with services rendered by the artist for such other person or persons as are given to the producer under the terms of this agreement.

7. In the event that the producer desires, at any time or from time to time, to apply, in its own name, or otherwise, but at its own expense, for life, health, accident or other insurance covering the artist, the artist agrees that the producer may do so and may take out such insurance for any sum which the producer may deem necessary to protect its interests hereunder. The artist shall have no right, title or interest in or to such insurance, but agrees, nevertheless, to assist the producer in procuring the same by submitting to the usual and customary medical and other examinations and by signing such applications and other instruments in writing as may reasonably be required by such insurance company or companies.

8. In the event that by reason of mental or physical disability, or otherwise, the artist shall be incapacitated from fully performing the terms hereof or complying with each and all of his obligations hereunder, or in the event that he suffer any facial or physical disfigurement materially detracting from his appearance on the screen or interfering with his ability to perform properly his required services hereunder, or in the event that his present facial or physical appearance be materially altered or changed, or in the event that he suffer any impairment of his voice, then in either or any of said events this agreement shall be suspended during the period of such disability or incapacity or facial or physical disfigurement or change of present facial or physical appearance, or impairment of voice, and no compensation need be paid the artist during the period of such suspension. The term of this agreement, and all of its provisions herein contained, may be extended, at the option of the producer, for a period equivalent to all or any part of the period of such suspension. The producer, at its option, in the event of the continuance of such disability or incapacity or facial or physical disfigurement or change of present facial or physical appearance or impairment of voice for a period or aggregate of periods in excess of three (3) weeks during the term hereof, may cancel and terminate this employment. The producer shall have the right, at its option, to have medical examinations of the artist made at any time and from time to time by such

physician or physicians as the producer may designate.

9. In the event that at any time during the term hereof the producer, or any person to whom the services of the artist are loaned by the producer hereunder, should be materially hampered, interrupted or interfered with in the preparation, production or completion of photoplays by reason of any fire, casualty, lockout, strike, labor conditions, unavoidable accident, riot, war, act of God, or by the enactment of any municipal, state or federal ordinance or law, or by the issuance of any executive or judicial order or decree, whether municipal, state or federal, or by any other legally constituted authority, or by any national or local emergency or condition, or by any other cause of the same or any similar kind or character, or if by reason of the illness or incapacity of any principal member of the cast (other than the artist) or of the director of any photoplay in which the artist is rendering or is scheduled to render services, the production of such photoplay is suspended, interrupted or postponed, or if for any reason whatsoever the majority of the motion picture theatres in the United States shall be closed for a week or any period in excess of a week, then and in any of said events this agreement, at the option of the producer, may be suspended, likewise, during the continuance of such event or events, and no compensation need be paid the artist during the period of such suspension, and the term of this agreement, at the option of the

producer, may be continued and extended, upon the same terms and conditions as shall then be operative hereunder, for a period equivalent to all or any part of any period or periods during which any such event or events shall continue. If such suspension or suspensions or any such event or events should continue for a period or aggregate of periods in excess of twelve (12) weeks during the term hereof, then and in that event the producer, at its option, may cancel and terminate the artist's employment hereunder. If such suspension or suspensions should continue for a period or aggregate of periods in excess of twelve (12) weeks during the term hereof when the rate of compensation hereunder is One Hundred Fifty Dollars ($150.00) a week or more, the artist, at his option, may elect to terminate the artist's employment hereunder; provided, however, that should the artist desire to elect to terminate his employment he shall serve notice of such desire upon the producer, and if the producer should not resume the payment of the weekly compensation hereinafter specified, commencing as of not later than one (1) week after the receipt of such notice from the artist, then and in that event the employment of the artist hereunder shall be terminated. If the producer should resume the payment of such compensation, commencing as of not later than one (1) week after the receipt of such notice, then and in that event the employment of the artist hereunder shall not be terminated, but shall continue in full force and effect. The provisions of the next succeeding sentence of this Paragraph 9 shall be

deemed to be a part of this contract during and only during any period in which the rate of compensation hereunder is less than One Hundred Fifty Dollars ($150.00) per week. During any contract period in which the rate of compensation hereunder is less than One Hundred Fifty Dollars ($150.00), per week, any suspension or suspensions pursuant to the provisions of this Paragraph 9 shall be limited to four (4) weeks; provided, however, that the producer shall have the right to continue such suspension from week to week, not exceeding eight (8) additional weeks, but during such suspension in excess of four (4) weeks the producer shall pay the artist compensation hereunder at a rate equal to one-half (½) the rate of compensation herein provided for with respect to the term or period in which such suspension in excess of four (4) weeks occurs.

10. The artist warrants and represents to the producer and agrees that the artist is and shall be a member in good standing of Screen Actors Guild, Inc., and will remain so for the duration of this contract.

11. Notwithstanding anything elsewhere contained herein, it is expressly agreed that if at the time of the expiration of this agreement the artist is engaged in a photoplay or photoplays or in the rendition of any of his other required services hereunder, and if the producer shall not then have exercised an option for the further services of the artist for a further period, then and in that event

the artist's employment hereunder, at the option of the producer, may be continued and extended, at the same rate of salary and upon the same conditions as shall be operative hereunder immediately prior to the time of such expiration, until the completion of such of the artist's required services hereunder as the producer may desire in connection therewith, not exceeding sixty (60) days. If, after the expiration of this employment, the producer should desire the services of the artist in making retakes, added scenes, sound track, or any change or changes in any photoplay in which the [22] artist shall have appeared during his employment hereunder, then and in either of said events the artist agrees to render such services in connection therewith as and when the producer may request, unless the artist is otherwise employed, but if otherwise employed the artist will cooperate to the fullest extent in the making of such retakes, added scenes, sound track and/or changes, and for services actually rendered in the making thereof the artist shall be paid at the same rate of compensation as the artist was receiving immediately prior to the expiration of this employment, except that such compensation shall be paid only for the days on which the artist is actually so employed.

12. It is distinctly understood and agreed by and between the parties hereto that the services to be rendered by the artist under the terms hereof, and the rights and privileges granted to the producer by the artist under the terms hereof, are of a special,

unique, unusual, extraordinary and intellectual character which gives them a peculiar value, the loss of which cannot be reasonably or adequately compensated in damages in an action at law, and that a breach by the artist of any of the provisions contained in this agreement will cause the producer irreparable injury and damage. The artist hereby expressly agrees that the producer shall be entitled to injunctive and other equitable relief to prevent a breach of this agreement by the artist. Resort to injunctive and other equitable relief, however, shall not be construed as a waiver of any other rights that the producer may have in the premises, for damages or otherwise. In the event of the failure, refusal or neglect of the artist to perform or observe any of his obligations hereunder to the full limit of his ability or as instructed, the producer, at its option, shall have the right to cancel and terminate this employment, may refuse to pay the artist any compensation during the period of such failure, refusal or neglect on the part of the artist, and shall likewise have the right to extend the term of this agreement and all of its provisions for a period equivalent to all or any part of the period during which such failure, refusal or neglect continues. If, at the time of such failure, refusal or neglect, the artist shall have been cast to portray a role in a photoplay, or shall have been directed to render any other of his required services hereunder, then and in either of said events the producer shall have the right to refuse to pay the artist any compensation during the time which would have been reasonably

required to complete the portrayal of said role and/or to render such other services, or (should another person be engaged to portray such role or to render such other services) until the completion of such role or such other services by such other person; and in any or either of such events the producer shall also have the right to extend the term of this agreement and all of its provisions for a like period of time or for any portion thereof. Should the producer notify the artist that the artist has been cast to portray a role in a photoplay or to perform any other of his required services hereunder, and should the artist thereupon or at any time prior to the designated date of commencement of the rendition of such services advise the producer that the artist does not intend to render such services, the producer shall thereupon or at any time thereafter have the right to refuse to pay the artist any compensation commencing as of the date on which the artist has so advised the producer of his intent not to perform, or, at the producer's election, as of any time thereafter, and continuing until the expiration of the time which would have been reasonably required to complete the portrayal of said role and/or to render such other services, or (should another person be engaged to portray such role or to render such other services) until the completion of such role or of such other services by such other person; and in any or either of such events the producer shall also have the right to extend the term of this agreement and all of its provisions for

a like period of time or for any portion thereof. Any period during which the producer is entitled to refuse to pay compensation to the artist pursuant to any of the provisions of this paragraph shall, unless sooner terminated, end if and when the artist shall be requested by the producer to and shall render other services hereunder. The producer shall also have the right, at its option, to extend the term of this agreement and all of its provisions for a period of time equivalent to all or any part of any leave or leaves of absence granted the artist by the producer during the term hereof. Each and all of the several rights, remedies and options of the producer contained in this agreement shall be construed as cumulative and no one of them as exclusive of the others or of any right or priority allowed by law. All options granted to the producer herein for extending the term of this agreement, other than the options hereinafter in Paragraph 23 specifically set forth, may be exercised by the producer by notice in writing to be served upon the artist at any time prior to the expiration of the term hereof.

13. If this agreement be suspended or if the producer refuse to pay the artist compensation, pursuant to any right to do so herein granted to the producer, or if the producer grant any leave of absence to the artist, and if in connection with such suspension, refusal to pay or leave of absence, the producer shall exercise the right to extend this agreement for a period equivalent to all or any part

of the period of such suspension, refusal to pay or leave of absence, then and in that event the running of the then current term or period of the artist's employment hereunder shall be deemed to be interrupted during the period of such suspension, refusal to pay or leave of absence, but shall be resumed immediately upon the expiration of such suspension or leave of absence or (in case of any such refusal to pay) upon the resumption of the payment of compensation, and (subject to subsequent extension or termination for proper cause) shall continue from and after the date of such resumption for a period equal to the unexpired portion of such term or period at the time of the commencement of such suspension, refusal to pay or leave of absence, less a period equal to that portion, if any, of the period of such suspension, refusal to pay or leave of absence, for which the producer does not exercise the right to extend this agreement. In the event of any such extension the dates for the exercise of any subsequent options and the dates of the commencement of any subsequent optional period or periods of employment hereunder shall be postponed accordingly. During the period of any such suspension, refusal to pay or leave of absence the artist shall not have the right to render his services to or for any person, firm or corporation other than the producer without the written consent of the producer first had and obtained. Should the producer pay any money or compensation to the artist for or during all or any part of any period in which this agreement is suspended, or in which the

artist is not entitled to compensation, or in which the producer is entitled to refuse to pay compensation to the artist, then and in that event, at the option of the producer, the money and/or compensation so paid the artist shall be returned by the artist to the producer on demand, or the same may be deducted by the producer from any compensation earned hereunder by the artist after such period, but this provision shall not be deemed to limit or exclude any other rights of credit or recovery, or any other remedies, the producer otherwise may have. Wherever in this agreemnt reference is made to the phrases "the term hereof," "the term of this agreement," or other phrases of like tenor, such references (unless a different meaning clearly appears from the context) shall mean and be deemed to refer to the original period of the artist's employment hereunder and/or to whichever of the optional periods of employment provided for in Paragraph 23 hereof may be current at the time referred to.

14. No waiver by the producer of any breach of any covenant or provision of this agreement shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant or provision.

15. All notices which the producer is required or may desire to serve upon the artist under or in connection with this agreement may be served by addressing the same to the artist at such address as may be designated [23] from time to time in

writing by the artist, or if no such address be designated in writing by the artist, or, if having designated an address, the artist cancels the same and fails to designate a new address, then by addressing the same to the artist at any place where the producer has a studio or an office and, in any case, by depositing the same so addressed, postage prepaid, in the United States mail, or by sending the same so addressed by telegraph or cable, or, at its option, the producer may deliver the same to the artist personally, either in writing or, unless otherwise specified herein, orally. If the producer elect to mail such notice or to send the same by telegraph or cable, then the date of mailing thereof, or the date of delivery thereof to the telegraph or cable office, as the case may be, shall be the date of the service of such notice.

16. Nothing in this contract contained shall be construed so as to require the commission of any act contrary to law, and wherever there is any conflict between any provision of this agreement and any material statute, law or ordinance contrary to which the parties have no legal right to contract, the latter shall prevail, but in such event the provision of this agreement affected shall be curtailed and limited only to the extent necessary to bring it within the legal requirements.

producer

17. The artist agrees to furnish all modern wardrobe and wearing apparel necessary for any and all roles to be portrayed by the artist hereunder; it

being agreed, however, that should so-called "character" or "period" costumes be required the producer shall supply the same. It is distinctly understood and agreed, however, that in no event shall the producer be required to furnish shoes, hosiery, or underclothing for the artist; but the artist shall supply at his own expense all shoes, hosiery and underclothing (other than "character" or "period" shoes, hosiery or underclothing) necessary for any and all roles to be portrayed by him hereunder. All costumes, apparel, and other articles furnished or paid for by the producer pursuant to the terms of this agreement, or otherwise, shall be and remain the property of the producer and shall be returned promptly to it.

18. The services of the artist hereunder are to be rendered at such place or places as may from time to time be designated by the producer. When the artist is required to render his services on location the producer agrees to furnish such necessary and reasonable meals and transportation as may reasonably be required for the artist during and on account of the rendition of such services and where, in the judgment of the producer, it is necessary for the artist to remain on such location overnight, the producer agrees to furnish necessary lodging for the artist. The artist shall not be deemed to be on location when rendering services at or near the studio then generally used by the producer as the base for the production of its photoplays.

19. The artist expressly agrees that until the

expiration of the term hereof he will be available at all times in Los Angeles, California, or any other place the producer may designate, unless excused in writing by the producer. The artist further agrees that if and when requested by the producer to do so, he will report at the producer's studio, or at any other place the producer may designate, for wardrobe fittings, publicity interviews, publicity photograph sittings, making tests and/or "stills," and for such discussions as the producer may deem necessary or desirable; it being understood, however, that no compensation whatsoever shall be or become payable to the artist for the compliance by the artist with such request of the producer; provided, however, that if the artist shall be required to render any services as aforesaid for the producer during any period or periods in which the rate of compensation hereunder is less than One Hundred Fifty Dollars ($150.00) per week, the artist shall be paid therefor on the same basis and at the same rate as herein elsewhere provided.

20. Where necessary herein, all terms used in the masculine gender shall apply to the feminine gender.

21. The producer may transfer or assign all or any part of its rights hereunder to any person, firm or corporation, and this agreement shall inure to the benefit of the producer, its successors or assigns.

22. On condition that the artist shall fully and completely keep and perform each and every term

and condition of this agreement on his part to be kept or performed, the producer agrees to compensate the artist therefor and for all rights herein granted and/or agreed to be granted by the artist to the producer at the rate of Seventy-Five and No/100 Dollars ($75.00) per week, payable for each week during which the artist shall have actually rendered his services hereunder (other than as provided in Paragraph 19 hereof) either in connection with the production of a photoplay or photoplays or in the performance of any of his other required services hereunder. Conditioned as aforesaid, the producer agrees that compensation will be paid to the artist for a period or aggregate of periods of not less than twenty (20) weeks during the original term hereof and for a period or aggregate of periods of not less than twenty (20) weeks during each six (6) months optional period of employment for which an option is exercised hereunder, and for a period or aggregate of periods of not less than forty (40) weeks during each one (1) year optional period of employment for which an option is exercised hereunder; provided, however, that the foregoing shall be deemed to have been fully complied with in any year of this agreement for which compensation shall be paid to the artist for a period or aggregate of periods of forty (40) weeks. In computing compensation to be paid or deducted with respect to any period of less than a week, the weekly rate shall be prorated, and for this purpose the rate per day shall be one-sixth (1/6) of the

weekly rate. For the purposes of this paragraph the term "year of this agreement" shall be deemed to mean any period of three hundred sixty-five (365) consecutive days. If during the original term hereof or during any optional period of employment for which an option is exercised hereunder, this agreement be suspended, pursuant to any provision for suspension herein contained, or if the producer refuse to pay the artist compensation pursuant to any right to do so herein granted to the producer, then the minimum periods hereinabove specified, during which the producer is obligated to pay compensation to the artist, shall be reduced by a period equivalent to the period or aggregate of periods of such suspension or suspensions or refusal to pay. Any compensation due the artist hereunder shall be payable on Thursday of each week for services rendered up to and including the Wednesday preceding. During any period or periods in which the artist is not entitled to compensation pursuant to the provisions of this paragraph, he shall be deemed to be laid off without pay, and during such periods, of course, the artist shall not have the right to render his services for any person, firm or corporation without the written consent of the producer first had and obtained. Any such layoff of the artist shall be for a period of at least one (1) consecutive week, subject to recall for retakes and added scenes, but if there remains insufficient time at the end of the term hereof to lay the artist off for a period of at least one (1) consecutive week during the balance of said term, the

producer may, nevertheless, lay off the artist for the remaining unexpired balance of said term even though such balance be less than one (1) week. During any such layoff period the producer may recall the artist for retakes and added scenes. For the purposes of the preceding two sentences any period or periods during which the artist is not entitled to compensation pursuant to the provisions of Paragraphs 8, 9 or 12 hereof shall not be deemed to be layoff periods.

22½. The artist agrees

23. The term of employment hereunder shall commence on October 13, , 19 37, and shall continue for a period of - - Six months - - - - - - - (- 6 -) from and after said date. In consideration of the execution of this agreement by the producer and of the consent of the producer to the amount of compensation herein set forth, the artist hereby gives and grants to the producer the following rights or options:

(a) To extend the term of employment of the artist for an additional period of six (6) months from and after the expiration of the term hereinbefore specified, upon the same terms and conditions as herein contained, except that compensation shall be paid to the artist for this first extended period at the rate of One Hundred Twenty-five Dollars ($ 125.00) per week.

(b) To extend the term of employment of the artist for an additional period of six (6) months from and after the expiration of said first extended period, upon the same terms and conditions as herein contained, except that compensation shall be paid to the artist for this second extended period at the rate of One Hundred Fifty Dollars ($ 150.00) per week.

(c) To extend the term of employment of the artist for an additional period of six (6) months from and after the expiration of said second extended period, upon the same terms and conditions as herein contained, except that compensation shall be paid to the artist for this third extended period at the rate of One Hundred Seventy-five Dollars ($ 175.00) per week.

(d) To extend the term of employment of the artist for an additional period of six (6) months from and after the expiration of said third extended period, upon the same terms and conditions as herein contained, except that compensation shall be paid to the artist for this fourth extended period at the rate of Two Hundred Fifty Dollars ($ 250.00) per week.

(e) To extend the term of employment of the artist for an additional period of six (6) months from and after the expiration of said fourth extended period, upon the same terms and conditions as herein contained, except that compensation shall be paid to the artist for this fifth extended period at the rate of Three Hundred Dollars ($ 300.00) per week.

(f) To extend the term of employment of the artist for an additional period of six (6) months from and after the expiration of said fifth extended period, upon the same terms and conditions as herein contained, except that compensation shall be paid to the artist for this sixth extended period at the rate of Three Hundred Fifty Dollars ($ 350.00) per week.

(g) To extend the term of employment of the artist for an additional period of six (6) months from and after the expiration of said sixth extended period, upon the same terms and conditions as herein contained, except that compensation shall be paid to the artist for this seventh extended period at the rate of Four Hundred Dollars ($ 400.00) per week.

(h) To extend the term of employment of the artist for an additional period of six (6) months from and after the expiration of said seventh extended period, upon the same terms and conditions as herein contained, except that compensation shall be paid to the artist for this eighth extended period at the rate of Six Hundred Dollars ($ 600.00) per week.

(i) To extend the term of employment of the artist for an additional period of one (1) year from and after the expiration of said eighth extended period, upon the same terms and conditions as herein contained, except that compensation shall be paid to the artist for this ninth extended period at the rate of Seven Hundred Fifty Dollars ($ 750.00) per week.

~~(j) To extend the term of employment of the artist for an additional period of~~ ( ) from and after the expiration of said ninth extended period, upon the same terms and conditions as herein contained, except that compensation shall be paid to the artist for this tenth extended period at the rate of Dollars ($) per week.

(k) To extend the term of employment of the artist for an additional period of ( ) from and after the expiration of said tenth extended period, upon the same terms and conditions as herein contained, except that compensation shall be paid to the artist for this eleventh extended period at the rate of Dollars ($) per week.

(l) To extend the term of employment of the artist for an additional period of ( ) from and after the expiration of said eleventh extended period, upon the same terms and conditions as herein contained, except that compensation shall be paid to the artist for this twelfth extended period at the rate of Dollars ($) per week.

(m) To extend the term of employment of the artist for an additional period of ( ) from and after the expiration of said twelfth extended period, upon the same terms and conditions as herein contained, except that compensation shall be paid to the artist for this thirteenth extended period at the rate of Dollars ($) per week.

~~Each~~ option hereinbefore referred to may be exercised separately at least fifteen (15) days prior to the expiration of the respective next preceding period of employment, or the producer, at any time, but at least fifteen (15) days prior to the expiration of the term hereof or of any extension thereof, may elect to exercise all or any of the options not already exercised, in which event the term of this agreement shall be extended by the period or periods specified in the option or options so exercised by the producer. The exercise by the producer of any one or more of said options shall not be construed as an election by it not to exercise the remaining options. All notices of the exercise of any option shall be in writing and shall be served upon the artist within the periods above specified.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above written.

REPUBLIC PRODUCTIONS, INC.

By E H Goldstein
Secretary-Treasurer.

Leonard Sly
(Artist)

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EXHIBIT B

Republic Productions, Inc.
Republic Studios
4024 Radford Avenue
North Hollywood, California

February 16, 1938.

Mr. Leonard Slye,
c/o Republic Productions, Inc.,
North Hollywood, California.

Dear Mr. Slye:

This will confirm the following agreement between us relating to that certain contract of employment between us, dated October 13, 1937, as amended:

Said contract is hereby amended in the following particulars:

(a) The words and figures "One Hundred Twenty-five Dollars ($125.00)," appearing in Subdivision (a) of Paragraph 23 of said contract, are hereby changed to "One Hundred Dollars ($100.00)."

(b) The words and figures "Two Hundred Fifty Dollars ($250.00)," appearing in Subdivision (d) of Paragraph 23 of said contract, are hereby changed to "Two Hundred Dollars ($200.00)."

(c) The words and figures "Three Hundred Dollars ($300.00)," appearing in Subdivision (e) of Paragraph 23 of said contract are hereby changed to "Two Hundred Fifty Dollars ($250.00)."

(d) The words and figures "Three Hundred Fifty Dollars ($350.00)," appearing in Subdivision (f) of Paragraph 23 of said contract, are hereby changed to "Three Hundred Dollars ($300.00)."

(e) The words and figures "Four Hundred Dollars ($400.00)," appearing in Subdivision (g) of Paragraph 23 of said contract, are hereby changed to "Three Hundred Fifty Dollars ($350.00)." [27]

(f) The words and figures "six (6) months" and "Six Hundred Dollars ($600.00)," appearing in Subdivision (h) of Paragraph 23 of said contract, are hereby changed, respectively, to "one (1) year" and "Four Hundred Dollars ($400.00)."

(g) The words and figures "Seven Hundred Fifty Dollars ($750.00)," appearing in Subdivision (i) of Paragraph 23 of said contract, are hereby changed to "Five Hundred Dollars ($500.00)."

(h) A new Subdivision (j), reading as follows, is hereby added to Paragraph 23 of said contract, immediately following subdivision (i) of said Paragraph 23, and shall be deemed to be made a part of said contract as though therein set forth in full:

"(j) To extend the term of employment of the artist for an additional period of one (1) year from and after the expiration of said ninth extended period, upon the same terms and conditions as herein contained, except that compensation shall be paid to the artist for this tenth extended period at the rate of Six Hundred Dollars ($600.00) per week."

[In margin opposite (j)]: Exercised 9/9/43.

Except as herein expressly provided, said con-

tract, as heretofore amended, is not altered, amended or affected in any manner or particular whatsoever.

In consideration of your consent to the foregoing, we hereby exercise the option referred to in Subdivision (a) of Paragraph 23 of said contract, as herein amended. The term of your employment is accordingly extended for an additional period of six (6) months from and after the expiration of the present term thereof, upon the same terms and conditions as are contained in said contract, as amended, except that compensation shall be paid to you during this first extended period at the rate of One Hundred Dollars ($100.00) per week.

If the foregoing is in accordance with your understanding and agreement kindly indicate your approval and acceptance thereof in the space hereinbelow provided. Your signature hereto will also constitute an acknowledgment of due, proper and timely service upon you of the notice of exercise of the aforesaid option.

Very truly yours,
REPUBLIC PRODUCTIONS, INC.,
By /s/ E. H. GOLDSTEIN,
Secretary-Treasurer.

Approved, Accepted and Acknowledged:
/s/ LEONARD SLYE. [28]

EXHIBIT C

North Hollywood, California.

May 9, 1942.

Mr. Leonard Slye,
Professionally known as
Roy Rogers,

c/o Republic Productions, Inc.,
North Hollywood, California.

Dear Mr. Slye:

This will confirm the following agreement between us amending that certain contract of employment between us, dated October 13, 1937, as heretofore amended:

The following provisions are hereby added to Paragraph 23 of said contract, immediately following Subdivision (j) of said Paragraph 23 (said Subdivision (j) having been added to said Paragraph 23 by that certain agreement between us, dated February 16, 1938), and shall be deemed to be a part of said contract as though set forth in full therein:

"(k) To extend the term of employment of the artist for an additional period of one year from and after the expiration of said tenth extended period, upon the same terms and conditions as herein contained, except that compensation shall be paid to the artist for this eleventh extended period at the rate of Seven Hundred Dollars ($700.00) per week.

[In margin opposite (k)]: Exercised 8/28/44.

"(l) To extend the term of employment of the artist for an additional period of one year from and after the expiration of said eleventh extended period, upon the same terms and conditions as herein contained, except that compensation shall be paid to the artist for this twelfth extended period at the rate of Eight Hundred Dollars ($800.00) per week.

[In margin opposite (l)]: Exercised 9/18/45.

"(m) To extend the term of employment of the artist for an additional period of one year from and after the [29] expiration of said twelfth extended period, upon the same terms and conditions as herein contained, except that compensation shall be paid to the artist for this thirteenth extended period at the rate of Nine Hundred Dollars ($900.00) per week.

[In margin opposite (m)]: Exercised 8/26/46.

"(n) To extend the term of employment of the artist for an additional period of one year from and after the expiration of said thirteenth extended period, upon the same terms and conditions as herein contained, except that compensation shall be paid to the artist for this fourteenth extended period at the rate of One Thousand Dollars ($1,000.00) per week.

[In margin opposite (n)]: Exercised 10/15/47.

"(o) To extend the term of employment of the artist for an additional period of one year from and after the expiration of said fourteenth extended period, upon the same terms and conditions as herein contained, except that compensation shall be

paid to the artist for this fifteenth extended period at the rate of One Thousand One Hundred Dollars ($1,100.00) per week."

The foregoing Subdivisions (k) to (o), inclusive, shall be deemed to constitute additional options to us under said Paragraph 23, which additional options are hereby granted by you to us.

In consideration of your consent to the foregoing agreement and of the grant of said additional options to us, we agree that on condition that you fully and completely keep and perform all of your obligations and agreements under said contract of employment, as amended, we will mention your name on the positive prints of, and in all paid advertising and paid publicity issued by us in connection with, each photoplay hereafter released by us in which you appear under said contract of employment, as amended, and complete the portrayal of your role. In all such credit, you shall be given at least featured billing. Nothing contained herein shall be construed to prevent so-called "teaser" and/or special advertising, publicity and/or exploitation relating to the story upon which each respective photoplay is based, any of the members of the cast, the authors, the director or [30] similar matters, without mentioning your name, or to prevent so-called "trailer" or other advertising on the screen without mentioning your name, and no casual or inadvertent failure to comply with the provisions of this paragraph shall constitute a breach of this agreement or of said contract of employment.

Except as herein expressly provided said contract of employment, as heretofore amended, is not hereby changed or amended in any particular.

If the foregoing is in accordance with your understanding and agreement kindly indicate your approval and acceptance thereof in the space hereinbelow provided.

Very truly yours,
REPUBLIC PRODUCTIONS, INC.,
By /s/ E. H. GOLDSTEIN,
Secretary-Treasurer.

Approved and Accepted:
/s/ LEONARD SLYE,
/s/ ROY ROGERS. [31]

EXHIBIT D

Agreement

Agreement executed at North Hollywood, California, on February 28, 1948, by and between Republic Productions, Inc., a New York corporation, herein referred to as the "Producer," and Roy Rogers, herein referred to as the "Artist,"

Witnesseth:

1. The Producer hereby employs the Artist to perform services as an actor in not more than nine (9) feature-length western and/or outdoor action photoplays to be designated by the Producer, and

on reasonable notice to perform all reasonably required services incidental thereto, including but not limited to services in connection with making tests, stills, publicity photographs and auditions, wardrobe fittings, publicity interviews, the study of lines and scripts, and participation in conferences and discussions, the making of electrical transcriptions for use in advertising and exploiting said motion pictures, and the making of personal and radio appearances as hereinafter provided. Not more than five (5) of said photoplays shall be produced in either year of the term hereof. Unless at least two (2) of said photoplays are produced during the first year of the original term hereof, the Artist shall have the right to terminate this agreement as of the date of expiration of said first year of said term by serving notice of exercise of such right of termination on the Producer not later than seven (7) days after the expiration of said first year of said term; and similarly unless at least two (2) of said photoplays are produced during the second year of the original term hereof, the Artist shall have the right to terminate this agreement as of the date of expiration of said second year of said term by serving notice of exercise of such right of termination on the Producer not later than seven (7) days after the expiration of said second year of said term; subject, however, to the provisions of Paragraphs 12 and 16 hereof; provided, however, that if the first installment of compensation of [32] the succeeding year shall become due during such

seven (7) day period the Producer may withhold payment thereof until the expiration of such seven (7) day period, and if the Artist serves notice of exercise of such right of termination, such installment shall, of course, not be payable. With respect to personal and radio appearances, it is agreed that the Artist shall not be required to make more than one personal appearance in connection with each photoplay in which he appears hereunder and one radio appearance in connection with each such photoplay, without his consent. The Artist also agrees to make personal appearances during the term hereof at sales conventions of Republic Pictures Corporation or its successors. The Artist hereby accepts this employment and agrees to perform the services above described and to comply fully with all of his duties, obligations and agreements hereunder during the term hereof. The Producer agrees to cooperate with the Artist so as to allow him as much free time for his own purposes as reasonably possible and consistent with the Producer's requirements for his services hereunder. For this purpose, the Producer agrees to advise the Artist of the tentative commencement date of his services in each photoplay hereunder with reasonable promptness after such tentative commencement date has been set by the Producer, and also of all changes made in such tentative commencement date with reasonable promptness after such changes are determined upon, and with respect to the incidental services referred to above, to advise the Artist when

such services will be required as far in advance thereof as reasonably possible. The producer further agrees that it will not require the Artist to report at the Producer's studio or elsewhere at any time when his services are not actually required and if after notifying the Artist to report, the Producer's plans with respect to the Artist's services change, the Producer agrees to notify the Artist of such change of plans as promptly [33] as reasonably possible.

2. The Artist agrees that he will promptly and faithfully comply with all reasonable instructions and requests of the Producer in connection with the performance of his services hereunder, and with all reasonable rules and regulations of the Producer. The Artist further agrees that he will perform his services and comply with all of his agreements hereunder conscientiously and to the full limit of his talents and abilities, at all times (except as hereinafter expressly provided) and wherever required by the Producer and in accordance with the Producer's instructions and directions in all matters arising under this agreement, including those involving artistic taste and judgment. The terms "motion pictures," "photoplays" and their equivalents as used herein include but are not limited to motion picture productions produced, exhibited and/or transmitted by or with sound and voice recording, reproducing and/or transmitting devices, radio devices, television devices and all other devices and improvements, present or future,

which may now or hereafter be used for or in connection with the production, exhibition and/or transmission of any present or future kind of motion picture productions

3. The Artist agrees that he will perform his services in connection with the production of motion pictures solely and exclusively for the Producer during the term hereof, and that he will not at any time during said term, or prior to the commencement thereof, perform services as an actor, writer, director or in any other capacity in or in any way connected with motion pictures or television for himself or for any person or company other than the Producer. The Artist also agrees that he will not advertise, announce or make known, or authorize or permit any person or company, to advertise, announce or make known, directly or [34] indirectly, by any means, that the Artist has contracted to or will perform any such services for anyone other than the Producer or do any other act contrary to the terms of this agreement. The Producer shall have the right to prevent such acts or any of them by appropriate legal procedings, and the Artist hereby authorizes the Producer to initiate and maintain such proceedings in the Artist's name or otherwise.

4. (A) The Artist hereby grants to the Producer the sole and exclusive right to his services for motion picture purposes during the term hereof, and for this purpose the Producer shall have the right to photograph and/or otherwise reproduce

any and all of his acts, poses, plays and appearances of any and all kinds, and to record his voice and all instrumental, musical and other sound effects produced by him, and to reproduce and/or transmit such recordings either separately or in conjunction with such acts, poses, plays and appearances, as the Producer may desire. The Artist also grants to the Producer, solely and exclusively, all rights of every kind and character whatsoever in and to all such photographs, reproductions and recordings and all other results and proceeds of his services hereunder, perpetually, and also the perpetual right to use the Artist's name and pictures or other reproductions of his physical likeness and recordations and reproductions of his voice, in connection with the advertising and exploitation thereof and of the services of the Artist hereunder. The Producer shall have the right to "dub" the voice of the Artist and all instrumental, musical and other sound effects to be produced by him to such extent as the Producer may desire, including the right to "dub" the Artist's voice in English and any other languages desired by the Producer. The Producer shall also have the right to use a "double" for the acts, poses, plays and appearances of the Artist to such extent as may be desired [35] by the Producer.

(B) For the purpose of advertising the photoplays to be produced hereunder, and subject to the reservations set forth in Subparagraph (C) of this Paragraph 4, the Artist also hereby grants to the

Producer the right, during the term hereof, to use and/or authorize the use of his name and/or likeness in so-called "commercial advertising," to wit, advertising relating to products other than motion pictures, subject to the following limitations:

(a) The Producer may not use or authorize the use of the Artist's name or likeness in connection with more than twenty (20) products in either year of the term hereof, nor as the trade name, name or designation of any product, nor in connection with endorsements of any product (but the mere use of the name and/or likeness of the Artist in an advertisement shall not be considered to be an endorsement, for the purposes of this agreement), nor in connection with alcoholic beverages, tobacco, laxatives, deodorants, articles of feminine use, or any other product with which, at the time of such use or authorization, it reasonably might be considered to be detrimental or prejudicial to associate the Artist or inconsistent with or harmful to his position as a motion picture star, particularly with reference to his youthful fan audience.

(b) The Producer may not use or authorize the use of the Artist's name or likeness in connection with any "competing product" (which is defined as any product of the same class or kind as any product manufactured or sold by any person, firm or corporation with whom the Artist may then have or be negotiating for a commercial tie-up or who is the sponsor of any

radio series which the Artist may then have or be negotiating for). The Artist will inform the Producer in writing from time to time during the term hereof of the products in connection with which the Artist may then have or be negotiating for commercial tie-ups and the persons, firms or corporations with whom the Artist may then have or be negotiating for commercial tie-ups. It is agreed, however, that the Artist shall not be estopped by the lists which he gives to the Producer from time to time as aforesaid, and in order to insure compliance with the provisions of the first sentence of this Subdivision (b) the Producer shall advise the Artist in writing of each commercial tie-up for the use of the Artist's name and/or likeness into which it proposes to enter, and if such product is a competing product, the Artist shall so notify the Producer in writing within ten (10) days after the service of the [36] Producer's notice, also stating what the competing product is. If the Artist fails so to notify the Producer, the Producer may then enter into the proposed commercial tie-up. In any event, the Producer shall give due consideration to the wishes and suggestions of the Artist with respect to any such proposed commercial tie-ups.

(c) All commercial advertising authorized by the Producer pursuant to this Subparagraph (B) shall be submitted to the Artist prior to publication or release, and the Producer shall

give due consideration to the wishes and suggestions of the Artist with respect thereto. The Artist will act promptly in making suggestions with respect to all such material.

(d) Any consideration received by the Producer from any such commercial advertising shall promptly be paid over to the Artist.

(C) The Artist reserves to himself the right to enter into any and all commercial tie-ups for products of every kind or character (other than motion pictures) including but not limited to endorsements for commercial purposes, phonograph records, transcriptions (but the Producer shall have the right to make and use the transcriptions provided for in Paragraph 1 hereof for the purposes therein provided), publications (including so-called "comic" books or magazines), guns, shirts, boots, belts, blue jeans, toys, candies and gums, and it is agreed that the Artist may freely exploit and sell such rights to any persons, firms or corporations that the Artist in his sole discretion may determine (except motion picture companies) provided, however, that the Artist agrees:

(a) He shall not use or authorize or willingly permit the use of his name, likeness, or voice in connection with alcoholic beverages, tobacco, laxatives, deodorants, or articles of feminine use, or any other product with which, at the time of such use, authorization or permission, it reasonably might be considered to be detrimental or prejudicial to associate the Artist or inconsistent with or harmful to his

position as a motion picture star, particularly with reference to his youthful fan audience.

(b) In connection with publications (including so-called "comic" magazines), phonograph records, transcriptions and the like, the Artist shall from and after the date of this contract insert or cause to be inserted in all contracts and agreements appertaining thereto, a clause substantially as follows: "The Artist shall not be depicted, described, shown or mentioned, in any form whatsoever, in the character of a villain, thief, or other despicable or derogatory character, or as consuming, dispensing or handling alcoholic beverages, tobacco of any kind or form, laxatives, deodorants, articles of feminine use, [37] or any other product with which it reasonably might be considered to be detrimental or prejudicial to associate the Artist, or as engaging in any mental or physical dissipation, or in any manner which will appeal to the sensual emotions of the reader, but all material shall star the Artist, and depict, describe, show or mention the Artist or any character described by the name of Roy Rogers or Rogers, in a decent and virtuous manner, and as champion of right and the enemy of wrong."

(c) In connection with publications (including so-called "comic" magazines), phonograph records, transcriptions and the like, the Artist agrees that all such [38] material shall be submitted to the Producer prior to publication

or release and the Artist shall give due consideration to the wishes and suggestions of the Producer in connection with the contents and format thereof. The Producer will act promptly in making suggestions with respect to all such material.

(d) All advertising relating to any products in connection with which the Artist enters into commercial tie-ups or agreements (but not including labels, wrappings or containers) shall mention that the Artist is a Republic star, and whenever practical shall also mention the title of a Roy Rogers photoplay then in current release.

(D) The Artist expressly reserves to himself the right to perform in rodeos and to make personal appearances in theaters and other places of entertainment for his own account prior to and during the term hereof, but at such times only as will not in any manner interfere with the Producer's requirements for his services hereunder. Whenever the Artist desires to make a personal appearance or personal appearances in a theater he agrees to consult with the Producer to determine whether one of the motion pictures in which he appears will be exhibited in the city or place in which he desires to make such personal appearance or personal appearances, in a theater or theaters at least equal in standing or character to the theater or theaters in which the Artist proposes to make such personal appearance or personal appearances, and if it is

determined that such will be the case, the Artist agrees to offer his services in the making of personal appearances to the theater or theaters which will be exhibiting such photoplay, in preference to any other theater or theaters in such city or place, provided that the compensation offered to him therefor shall not be less than he could obtain for such services in such other theater or theaters in such city or place.

(E) The Artist expressly reserves to himself the right to make so-called "spot" or "guest" radio appearances (but not including television appearances) for his own account prior to [39] and during the term hereof, but at such times only as will not in any manner interfere with the Producer's requirements for his services hereunder and not for any motion picture company. In the event that the Artist desires to appear on any such radio program at a time when his services are being rendered for the Producer, the Producer agrees to cooperate with the Artist for the purpose of permitting him to make such appearances if reasonably possible to do so. The Artist also reserves the right to appear in one or more series of radio programs, as distinguished from "spot" or "guest" appearances (but not including television appearances and not for any motion picture company), conditioned as hereinafter provided. To the extent that any such series is broadcast during production of a photoplay hereunder, the Producer agrees to release the Artist on the day of the broadcast in time to permit him to rehearse for and make the broadcast, but not

earlier than one o'clock p.m.; provided, however, that if the Artist's circumstances in connection with such broadcast are such as to require his release earlier than one o'clock p.m., the Producer agrees to cooperate with the Artist for the purpose of releasing him earlier than one o'clock p.m., if reasonably possible to do so. In connection with television, the Artist agrees not only not to make any television appearances prior to the expiration of the term hereof, as elsewhere herein provided, but also agrees not to make or willingly permit to be made any film or other device for reproduction by television by anyone other than the Producer at any time prior to the expiration of the term hereof. In connection with his radio appearances, the Artist agrees:

(a) Exclusive of "spot" or "guest" appearances, the Artist shall not make more than one (1) live broadcast during any one (1) calendar week at any time when he is engaged in the production of a photoplay hereunder. [40]

(b) The Artist shall not have the right to render services in any live broadcast at any time when his services hereunder are being rendered on location, unless he makes appropriate arrangements without any cost or expense whatsoever to the Producer to render his services in connection with such broadcast and rehearsals therefor at such time that he is not required to leave such location earlier than one o'clock p.m. of the day of the broadcast and will be able to return to such location in sufficient time to perform his services as

and when instructed on the next day that his services are required by the Producer; provided, however, that if the Artist requires additional time, the Producer agrees to cooperate with the Artist for the purpose of allowing him such additional time to make such broadcasts when on location if reasonably possible to do so.

(c) The sponsorship and material for the broadcast shall not be concerned or connected in any way, directly or indirectly, with alcoholic beverages, tobacco, laxatives, deodorants, articles of feminine use, or any other product with which it is or reasonably might be considered to be detrimental or prejudicial to associate the artist or inconsistent with or harmful to his position as a motion picture star, particularly with reference to his youthful fan audience, nor shall any such broadcast relate, either directly or indirectly, to photoplays or the motion picture industry except with the written consent of the Producer first had and obtained.

(d) The Artist shall not be depicted, described or mentioned in any way in the character of a villain or thief or other despicable or derogatory character or as consuming, dispensing or handling any of the products referred to in subdivision (c) above, or as engaging in any mental or physical dissipation or in any other manner which will appeal to the sensual emotions of the audience, but any

material depicting, describing, showing or mentioning the Artist or any character described by the name of the Artist or which the Artist is to recite or sing on the program, shall refer to the Artist only in a decent and virtuous manner and shall show him to be a champion of right and an enemy of wrong. All agreements which the Artist enters into for the performance of his services on the radio shall include an express obligation on the part of the producer of the radio show to comply with the foregoing provisions. The format and script of all shows in which the Artist is to appear, and (to such extent as may be reasonably possible) all advertising material relating to such shows in which the name or likeness of the Artist is used, shall be submitted to the Producer prior to the broadcast and the Artist shall give due consideration to the wishes and suggestions of the Producer in connection therewith and shall require the producer of the program to do so likewise. The Producer will act promptly in making suggestions with respect to all such material. In this connection, however, the Producer understands that on some occasions scripts of radio shows are revised or rewritten at such a late date as would make it impracticable for the Artist to submit the same to the Producer prior to the broadcast, and in such cases submission shall be excused. All such advertising and publicity material shall mention the fact that the Artist

is a Republic star and shall mention the title of at least one (1) photoplay then in current release in which the Artist appears. Similar courtesy credit shall be accorded in each broadcast itself. The Artist shall cooperate with the Producer in endeavoring to obtain prominent mention of such photoplay or photoplays in such advertising and publicity.

(e) The Artist shall notify the Producer in writing of the day of the week on which he is to perform services on the radio, at least three (3) weeks prior thereto.

(F) Notwithstanding anything to the contrary set forth in subparagraphs (D) and (E) of this paragraph 4, it is hereby expressly agreed that the Artist shall not have the right to render any personal services for himself or for any person, firm or corporation other than the Producer at any time prior to the expiration of the term hereof when the Artist wilfully fails or refuses to perform his services or to comply with his other obligations and agreements hereunder; but this subparagraph (F) shall be subject to the provisions of paragraph 8 hereof relating to the "free periods."

5. The Artist agrees to conduct himself with due regard to public conventions and morals, and further agrees not to do or commit any act or thing that will reasonably tend to degrade him or to bring him into public hatred, contempt, scorn or ridicule, or that will reasonably tend to shock, insult or offend the community or offend public morals or

decency, or to prejudice the Producer or the motion picture industry in general.

6. The Producer shall have the right to lend the services of the Artist to Loew's Incorporated, Twentieth Century-Fox [42] Film Corporation, Paramount Pictures, Inc., Warner Brothers Pictures, Inc., RKO Radio Pictures, Inc., Universal Pictures Company, Inc., Columbia Pictures Corporation, and Walt Disney Productions, or to any one or more of said companies (but not to any other person, firm or corporation) for any one or more of the photoplays provided for in this agreement, subject, however, to the following conditions and limitations:

(a) The Producer shall not have the right to lend the Artist for more than one (1) photoplay in any one (1) year of the term.

(b) The Artist shall not be required to render services in connection with any particular loan-out for more than eight (8) weeks.

(c) Any photoplay for which the Artist is loaned shall be at least comparable in quality and cost to the photoplays in which the Artist has theretofore appeared hereunder.

(d) In the event that any particular loan-out of the Artist in connection with any photoplay shall continue for any period in excess of five (5) weeks the Artist shall be entitled to receive, and the Producer agrees to pay to the Artist (in addition to all other compensation payable to the Artist hereunder), an amount

equal to one-half (½) of the profits, if any, made by the Producer from such loan-out. For the purposes of this subdivision (d), the "profits" made by the Producer from a loan-out shall be deemed to be the total of the sums paid by the borrower to and actually received by the Producer as consideration for the loan-out, less (1) the sum of Twenty-two Thousand Two Hundred Twenty-two Dollars and Twenty-two Cents ($22,222.22), (2) any additional compensation payable to the Artist with respect to the particular photoplay pursuant to paragraph 12 hereof, (3) the sum of Five Hundred Dollars ($500.00) and (4) costs of collection, if any. It is understood and agreed that if the Producer desires to lend the services of the Artist, it shall not be obligated to lend such services at a profit, as defined in this subdivision (d). It is further agreed that if the term of the loan does not exceed five (5) weeks, the Artist shall not be entitled to any additional compensation with respect to such loan pursuant to the provisions of this subdivision (d), whether or not the Producer makes a profit from such loan; and in this connection, if the term of the loan is a period of five (5) weeks or less, and in addition the Producer makes the Artist's services available to the borrower after the expiration of the term of the loan for retakes, added scenes, sound track or changes, for an aggregate of

not to exceed five (5) days, such loan shall, for the purposes of this subdivision (d), be considered to be a loan for a period of five (5) weeks or less (even though the aggregate time actually exceeds five (5) weeks), and the [43] Artist shall not be entitled to any additional compensation for such loan. Any additional compensation which may accrue to the Artist pursuant to the provisions of this subdivision (d) shall become due and payable within two (2) weeks following the expiration of the loan in question, and if additional payments are received by the Producer from the borrower after such two (2) weeks period, then within two (2) weeks after each respective payment is received.

In the event that the services of the Artist are loaned pursuant to this Paragraph 6, the services which may be performed by or required of the Artist pursuant to such loan shall be deemed to be performed or required under this agreement in all respects and the Artist shall not be required to do any act or perform any services under any such loan contrary to the provisions of this agreement. The obligations of the borrower shall be subject to the provisions of this agreement in all respects, but no act or omission of any such company shall constitute a breach of this agreement by the Producer, nor shall the Artist have the right to terminate this agreement, or have any other right or remedy against the Producer, by reason of any such act or omission of any such company. In the event, however, of any act or omission of any such com-

pany which, if it were the act or omission of the Producer, would constitute a breach of this agreement by the Producer, the Artist shall be released from the obligation to perform further services for such company in connection with the particular photoplay for which the Artist's services were loaned to such company, but such right of release shall be in addition, and without prejudice, to the Artist's other rights and remedies at law or in equity against the borrower. The Artist shall perform services for such company (provided that the conditions prescribed in this Paragraph 6 are complied with) conscientiously and to the full limit of his talents and abilities, and such company, at the option of the Producer, shall be [44] entitled to the same rights in and to the results and proceeds of the Artist's services for such company, and to the advertising and other rights in connection with the particular photoplay, as the Producer would have had hereunder had such services been performed for the Producer.

7. The Artist agrees that the Producer may at any time or times, in its own or in the Artist's name, but at its own expense, apply for life, health, accident, or other insurance covering the Artist, in any amount which the Producer may deem necessary [45] to protect its interests hereunder, provided, however, that the Artist does not represent that such insurance is obtainable. The Producer may be the beneficiary of and shall own all rights in such policies and the cash values and proceeds

thereof, and the Artist shall have no rights, title or interest therein or with respect thereto. The Artist agrees to assist in procuring such insurance by submitting to the customary medical examinations and by correctly preparing, signing and delivering such applications and other documents as may reasonably be required.

8. (A) The term of this agreement shall begin on March 1, 1948, and shall continue for a period of two (2) years from and after said date.

(B) However, it is expressly agreed by the Producer that the Artist shall not be required to perform services hereunder during the months of September and October (herein referred to as the "free period") of each year of the term hereof; provided, however, that if the Producer has commenced production of a photoplay hereunder at least as long prior to the commencement of the next free period as the production schedule of such photoplay, and is unable to complete the photographing and recording of the Artist's role in such photoplay prior to the commencement of such free period solely because of a wilful refusal of the Artist, without justification, to perform his services for the Producer in connection with such photoplay as required by this agreement, the Producer shall be entitled to the Artist's services, and the Artist agrees to render his services for the Producer, during such free period for a period equal to the delay caused by such wilful refusal of the Artist, but not beyond the completion of the photographing and

recording of such role. The Artist shall have the right to make rodeo tours and to perform any other kind of work (except in connection with motion pictures and television) for his own account during said free [46] periods, subject to the completion of his services for the Producer in a photoplay under the conditions specified in the proviso of the preceding sentence. The Producer shall not have the right to extend this agreement because of said free periods and the Artist shall be paid his regular installments of compensation which become due during said free periods. In the event that the Artist desires to take his free period in any particular year at any time other than as specified above, he shall have the right to designate two (2) other consecutive months during such year for such free period, provided that he notifies the Producer in writing of such other two (2) months period at least five (5) months prior to September 1st and also at least five (5) months prior to the date of commencement of the two (2) consecutive months designated by the Artist as his free period; and provided further that at least five (5) months shall intervene between each free period. The Artist shall not have the right to change the free period of any particular year more than once.

(C) The Producer agrees to endeavor to arrange its production schedule in such manner that the Artist shall have at least two (2) weeks of free time between each of the photoplays in which he is to appear hereunder and immediately following each free period. The Artist understands, how-

ever, that due to the exigencies of production, it may not always be possible for the Producer to arrange for such periods of free time between pictures or after a free period.

9. In the event of any extension of the first year of the original term of this agreement, the date of commencement of the second year of said term shall be postponed accordingly; and in the event of any extension of the second year of said term, the date of commencement of the optional term of this agreement [47] (if the option therefor is exercised) shall be postponed accordingly, it being understood that an extension of either year of said original term shall have the effect of extending said original term for an equivalent period. The phrases "the term hereof," "the term of this agreement" or other phrases of like tenor, as used in this agreement, shall mean (unless a different meaning clearly appears from the context) the term provided for in Subparagraph (A) of Paragraph 8 hereof or the optional term provided for in Paragraph 27 hereof, whichever may be current at the time referred to, including all extensions of the respective term, if any. Wherever reference is made in this agreement to a "year of the term," such reference, insofar as the optional term provided for in Paragraph 27 hereof is concerned, shall be deemed to be a reference to said optional term, and a "year of the term," as said phrase is used in this agreement, includes all extensions of the respective year of the term, if any.

10. For a good and valuable consideration, receipt of which is hereby acknowledged by the Producer, the Producer hereby agrees to pay the Artist the sum of Ten Thousand Dollars ($10,000.00) concurrently with the execution of this agreement. Receipt of said payment is hereby acknowledged by the Artist.

11. As full compensation for the services of the Artist to be rendered or tendered pursuant hereto during the original term hereof, and for all rights herein granted or agreed to be granted by the Artist to the Producer, the Producer agrees to pay the Artist the sum of Two Hundred Thousand Dollars ($200,000.00). Said compensation shall become due and payable in weekly installments as follows:

> One Hundred Three (103) installments of One Thousand Nine Hundred Twenty-Three Dollars and Eight Cents ($1,923.08); and
>
> One (1) installment of One Thousand Nine Hundred Twenty-Two Dollars and Seventy-Six Cents ($1,922.76). [48]

The first installment shall become due and payable on the first Thursday following the expiration of the first week of the term hereof and the remaining installments shall become due and payable weekly thereafter, subject to the provisions of this agreement with respect to withholding payment of installments of said compensation. In connection with any such withholding for or with respect to any period of less than a week, the weekly installments may be prorated, and for this purpose the rate per

day shall be one-sixth (1/6) of the respective weekly rate.

12. If at the expiration of this agreement (to wit, at the expiration of the original term or, if the option provided for in paragraph 27 hereof is exercised, at the expiration of said optional term, or if the Artist exercises the right of termination granted to him in paragraph 1 hereof, then at the expiration of the respective year of the original term, or if the Artist exercises the right of cancellation granted to him in paragraph 27 hereof, then at the expiration of the original term hereof) the Artist is engaged in a photoplay being produced hereunder, the Artist agrees to continue to render services hereunder until the completion of such of his services as the Producer may require in connection with such photoplay, not exceeding eight (8) weeks, and additional compensation shall be payable to the Artist for said additional period at the weekly rate of One Thousand Nine Hundred Twenty-Three Dollars and Eight Cents ($1,923.08). If after the expiration of this agreement the Producer should desire the services of the Artist in making retakes, added scenes, sound track or changes in any photoplay or photoplays in which the Artist has appeared during his employment hereunder, and if all such retakes, added scenes, sound track and changes can be completed in an aggregate of not to exceed ten (10) days, the Artist agrees to render his services [49] in connection therewith as and when the Producer may request, unless the Artist is

otherwise employed, but if otherwise employed the Artist agrees to cooperate to the fullest extent in the making of such retakes, added scenes, sound track and/or changes, and no compensation shall be payable to the Artist for such additional services for said additional ten (10) days.

13. In the event that by reason of any mental or physical or other disability the Artist shall be incapacitated from fully performing the terms hereof or complying with each and all of his obligations hereunder, or in the event that he suffer any facial or physical disfigurement materially detracting from his appearance on the screen or interfering with his ability to perform properly his required services hereunder, or in the event that his present facial or physical appearance be materially altered or changed, or in the event that he suffer any impairment of his voice, or in the event that he become unable to perform his services hereunder or to comply with any of his other agreements hereunder to the fullest extent for any other cause which renders such inability excusable at law (each and all of said conditions being herein referred to for convenience as "disability," it being understood, however, that the existence of any of the foregoing conditions for not to exceed two (2) consecutive weeks or four (4) aggregate weeks during either year of the term hereof at a time or times when the Artist's services are not actually required hereunder shall not be deemed a "disability" or a part of any period of "disability" within the meaning

of this paragraph 13), the Producer shall have the right to withhold payment of all or any of the installments of the Artist's compensation which would otherwise become payable during the period or periods of such disability, and shall also have the right to extend the year of the term in which such disability occurs for a period equivalent to all or any part of such period [50] or periods. If any suspension of payments pursuant to this paragraph should continue for a period or aggregate of periods in excess of eight (8) weeks during either year of the term hereof, the Producer may elect to terminate this agreement. The foregoing provisions for withholding payment of installments of the Artist's compensation, for extensions, and for termination are subject to the provisions of paragraph 16 hereof. In connection with any such disability, the Producer shall have the right to have the Artist examined at any reasonable time or times by any physician or physicians the Producer may designate, whether prior to or during the term hereof, and the Artist agrees to be available for and to submit to such examinations and to such tests as may be desired whenever reasonably so required.

14. In the event that at any time during the term hereof the Producer should be materially hampered, interrupted or interfered with in the preparation, production or completion of any photoplay in which the Artist is rendering or is to render services hereunder, by reason of any fire, casualty, lockout, strike, labor conditions, unavoidable acci-

dent, riot, war, act of God, the enactment, issuance or operation of any municipal, county, state or federal law, ordinance or executive, administrative or judicial regulation, order or decree, or any local or national emergency or unusual condition, or any other cause of the same or any similar kind or character, or if by reason of the illness or incapacity of any principal member of the cast (other than the Artist) of any photoplay in which the Artist is rendering or is scheduled to render services the production of such photoplay is necessarily suspended, interrupted or postponed, or if for any reason whatsoever the majority of the motion picture theaters in the United States shall be closed for a week [51] or any period in excess of a week (each and all of said events being herein referred to for convenience as "force majeure"), then and in any of said events this agreement, at the option of the Producer, may be suspended during the continuance of such event or events, and the Producer shall have the right to withhold payment of all or any of the installments of the Artist's compensation which would otherwise become payable during the period or periods of such suspension and shall also have the right to extend the year of the term in which the force majeure occurs for a period equivalent to all or any part of any period or periods during which any such event or events shall continue. In the event that the services of the Artist are loaned to any company pursuant to the provisions of Paragraph 6 and the preparation, production or completion of photoplay for which the

services of the Artist are loaned is materially hampered, interrupted or interfered with by any "force majeure," the Producer shall have the same rights and remedies prescribed in this Paragraph 14 as though the respective photoplay were one of the Producer's own photoplays. If any suspension or suspensions referred to in this paragraph should continue for a period or aggregate of periods in excess of twelve (12) weeks during either year of the term hereof, either the Artist or the Producer may elect to terminate this agreement; provided, however, that no suspension or suspensions by reason of illness or incapacity of any principal member of the cast (other than the Artist) shall authorize the Producer to exercise said right of termination; provided further that should the Artist desire to elect to terminate this agreement pursuant to this paragraph, he shall give written notice of such desire to the Producer, and if the Producer should not cancel such suspension and resume and thereafter continue the payment of the weekly installments of [52] compensation hereinabove specified, commencing as of not later than one (1) week after the receipt of such notice from the Artist (subject, however, to suspension of the payment of installments of compensation for other proper cause), this agreement shall thereupon terminate. If the Producer should resume the payment of said installments of compensation, however, commencing as of not later than one (1) week after the receipt of such notice, and thereafter continue payments as aforesaid, this agreement shall continue in full

force and effect, but the Producer shall have no further [53] right to withhold payment of installments of compensation during such year of the term pursuant to this paragraph, or to extend such year of the term pursuant to this paragraph with respect to any period or periods during such year of the term during which any force majeure occurs after the resumption of the payment of installments of compensation. The foregoing provisions for withholding payment of installments of the Artist's compensation, for extensions, and for termination are subject to the provisions of paragraph 16 hereof.

15. (A) It is understood and agreed by and between the parties hereto that the services to be rendered by the Artist under the terms hereof, and the rights and privileges granted to the Producer by the Artist under the terms hereof, are of a special, unique, unusual, extraordinary and intellectual character which gives them a peculiar value, the loss of which cannot be reasonably or adequately compensated in damages in an action at law, and that a breach by the Artist of any of the provisions contained in this agreement will cause the Producer irreparable injury and damage. The Artist hereby expressly agrees that the Producer shall be entitled to injunctive and other equitable relief to prevent a breach of this agreement by the Artist. Resort to injunctive and other equitable relief, however, shall not be construed as a waiver of any other rights or remedies which the Producer may have in the premises, for damages or otherwise, nor shall the prosecution of an action at law for

damages or other legal relief be construed to be a waiver of any other rights or remedies which the Producer may have in equity or otherwise. Without waiving any such other rights or remedies, the Producer may maintain an action for damages for breach of this agreement, and may also maintain subsequent actions for damages for other breaches of this agreement, and the institution or maintenance of any such action or actions shall not constitute or result in a termination of this agreement by the Producer (but shall be without prejudice to any right of the Producer to terminate this agreement, whether pursuant to any provision of this agreement or [54] any right at law). In the event of the refusal, wilful failure or knowing neglect of the Artist to perform his services as provided in this agreement or to observe any of his other obligations hereunder, or in the event that the Artist advises or otherwise indicates to the Producer (directly or through his agent or attorney) that he does not intend to perform his services as provided in this agreement or to observe any of his other obligations hereunder, the Producer shall have the right to terminate this agreement at any time while such refusal, wilful failure or knowing neglect continues or within fifteen (15) days after the cessation thereof, or at any time after the Artist advises or otherwise indicates to the Producer that he does not intend to perform (or within fifteen (15) days after he advises the Producer in writing that he is ready, able and willing to per-

form). The provisions of the preceding sentence shall not be construed to limit or exclude any other rights at law which the Producer may have, whether of termination or otherwise, in the event of a breach of this agreement by the Artist, all such legal rights being hereby expressly reserved by the Producer. In the event of the refusal, failure or neglect of the Artist to perform his services as provided in this agreement or to observe any of his other obligations hereunder, or in the event that the Artist advises or otherwise indicates to the Producer (directly or through his agent or attorney) that he does not intend to perform his services as provided in this agreement or to observe any of his other obligations hereunder (such failure, refusal or neglect, whether actual or anticipatory, as aforesaid, being herein referred to for convenience as "default") the Producer shall have the right to withhold payment of all or any of the installments of the Artist's compensation which would otherwise become payable during the period of such default on the part of the Artist, and shall likewise have the right to extend the year of the term in which such default occurs for a period [55] equivalent to all or any part of the period during which such default continues. Any such default of the Artist shall be deemed to continue until the Artist shall, in writing, notify the Producer of the Artist's willingness to render services hereunder and to comply with his other obligations and agreements; provided, however, that if at the time such

default commences, the Artist shall have been cast to portray a role in a photoplay or shall have been directed to render any other of his required services hereunder, and such default is of such character and duration that the Producer cannot, in its judgment (exercised reasonably and in good faith) utilize the Artist's services as planned, upon his notifying the Producer of his willingness to render services hereunder and to comply with his other obligations and agreements, the Producer shall have the right to withhold payment of all or any of the installments of the Artist's compensation which would otherwise become payable (a) during the time which would have been reasonably required to complete the portrayal of said role and/or to render such other services, or (b) should another person have been engaged to portray such role or to render such other services, until the completion of such role or such other services by such other person (unless such other person does not for any reason complete such role or other services, in which event subdivision (a) just above shall govern), and in any or either of such events the Producer shall also have the right to extend the respective year of the term for a like period of time or for any portion thereof. Notwithstanding anything to the contrary above set forth in this paragraph, however, it is agreed that any period during which the Producer is entitled to withhold payment of installments of the Artist's compensation and with respect to which the Producer is entitled to extend the year of the term, [56] pur-

suant to any of the provisions of this paragraph, shall end if and when the Artist shall be requested by the Producer to and shall render other services hereunder. In the event that the Artist was cast to portray a role in a photoplay at the time of commencement of any default of the Artist hereunder, and production of such photoplay is abandoned or the Artist is taken out of the photoplay because of such default, then in addition to any other right of extension provided for in this paragraph the Producer shall also have the right to extend the then current year of the term for an additional period not to exceed four (4) weeks if necessary in order to select and prepare a substitute photoplay for the Artist. The foregoing provisions for withholding payment of the Artist's compensation, for extentions, and for termination are subject to the provisions of paragraph 16 hereof. Each and all of the several rights, remedies and options of the Producer contained in this agreement shall be construed as cumulative and no one of them as exclusive of the others or of any right or remedy allowed by law. All options granted to the Producer herein for extending a year of the term, as well as the option to cancel a photoplay pursuant to subparagraph (B) of paragraph 16, shall be exercised by the Producer by notice in writing to be served upon the Artist at any time prior to the expiration of the respective year of the term in which such option accrued; provided, however, that if the option to cancel a photoplay pursuant to subparagraph (B) of paragraph 16 shall accrue

with respect to the fifth photoplay of the first year of the original term, the Producer may (provided it did not exercise its right to extend by virtue of the particular default involved, prior to the expiration of the first year of the term) exercise said option to cancel a photoplay at any time prior to the expiration of the original term. [57]

(B) In the event of the refusal, wilful failure, or knowing neglect of the Producer to observe any of its obligations hereunder, or in the event that the Producer advises or otherwise indicates to the Artist that it does not intend to observe any of its obligations hereunder, the Artist shall have the right to terminate this agreement at any time while such refusal, wilful failure, or knowing neglect continues, or within fifteen (15) days after the cessation thereof, or at any time after the Producer advises or otherwise indicates to the Artist that it does not intend to perform its obligations, or within fifteen (15) days after it advises the Artist in writing that it is ready, able and willing to perform. The provisions of the preceding sentence shall not be construed to limit or exclude any other rights at law which the Artist may have, whether of termination or otherwise, in the event of a breach of this agreement by the Producer, all such legal rights being hereby expressly reserved by the Artist. Resort to injunctive and other equitable relief shall not be construed as a waiver of any other rights or remedies which the Artist may have [58] in the premises, for damages or otherwise, nor shall the prosecution of an action at

law for damages or other legal relief be construed to be a waiver of any other rights or remedies which the Artist may have in equity or otherwise. Without waiving any such other rights or remedies, the Artist may maintain an action for damages for breach of this agreement, and may also maintain subsequent actions for damages for other breaches of this agreement, and the institution or maintenance of any such action or actions shall not constitute or result in a termination of this agreement by the Artist (but shall be without prejudice to any right of the Artist to terminate this agreement, whether pursuant to any provision of this agreement or any right at law). Each and all of the several rights, remedies and options of the Artist contained in this agreement shall be construed as cumulative and no one of them as exclusive of the others or of any right or remedy allowed by law.

16. (A) It is recognized that this agreement grants the Producer certain rights of extension, but it is hereby declared to be the intent of the parties that no year of the term hereof shall be extended except to the extent that it may be necessary to do so in order to enable the Producer to complete the production of the full quota of photoplays in which it is entitled to the services of the Artist hereunder, during such year of the term. The term "full quota of photoplays" as used in this Paragraph 16 means five (5) photoplays, if the Producer is entitled to produce five (5) photoplays hereunder during the then current year of

the term and elects to do so during said year, or four (4) photoplays if the producer is entitled to produce only four (4) photoplays hereunder during such year of the term or is entitled to produce five (5) but elects to produce only four (4); and said term likewise means [59] four (4) photoplays during the optional term if the option therefor is exercised. The Artist acknowledges, however, that the manner of scheduling the production of said photoplays and the effect of the occurrence of the various contingencies with respect to which the Producer has the right of extension upon the scheduling of production of said photoplays, is a matter of business judgment and that the decision of whether and to what extent to exercise said rights of extension shall be solely within the control of the Producer. The Producer agrees to exercise its judgment in this respect reasonably and in good faith so that no year of the term shall be extended beyond the time reasonably necessary for the Producer's requirements. In this connction it is further agreed that if production of the full quota of photoplays of any year of the term is completed during such year of the term, exclusive of any extensions, the Producer shall not exercise any right of extension which may have accrued unless failure to extend such year of the term would prejudice the Producer's schedule for the production of the full quota of photoplays of the next year of the term, if any, in which event the Producer shall exercise its right of extension only to the extent necessary so as not to prejudice its schedule for such next year of the term. Moreover if production of the full quota of photoplays

of any year of the term is completed during such year of the term as extended, but prior to the expiration of the full permissible extended period, any additional extension of such year of the term shall be cancelled and any additional right of extension of such year of the term shall not be exercised, unless such cancellation or failure to exercise such further right of extension would prejudice the Producer's schedule for the production of the full quota of photoplays of the next year of the term, if any, in which event the cancellation shall be effected or the additional right of extension shall be exercised only to the extent necessary so as not to prejudice the Producer's schedule for such next year of the term. [60]

(B) The Artist's "full compensation" for the purpose of this paragraph 16 shall be deemed to be the sum of Two Hundred Thousand Dollars ($200,000.00) for the original term and the sum of One Hundred Thousand Dollars ($100,000.00) for the optional term; provided, however, that in the event that the Artist refuses to perform his services in the production of any photoplay as required by this agreement, and solely as a result of such refusal such photoplay is abandoned or the Artist is taken out of such photoplay, the Producer may, in lieu of extending the respective year of the term because of such refusal, cancel the photoplay with respect to which the Artist has refused to render services, and upon such cancellation the Artist's full compensation shall thereupon be deemed to be reduced by the sum of Twenty-two Thousand Two

Hundred Twenty-two Dollars and Twenty-two Cents ($22,222.22) and the maximum number of photoplays to which the Producer is entitled hereunder shall be reduced by one photoplay; but said full compensation shall not in any event be reduced to an amount less than the Artist's earned compensation. The "earned compensation" of the Artist at any particular time, for the purposes of this paragraph 16 shall be the product of Twenty-two Thousand Two Hundred Twenty-two Dollars and Twenty-two Cents ($22,222.22) times the number of photoplays in which the Artist has theretofore completed his role during the then current year of the term, or, insofar as subparagraph (D) hereof is concerned, to the date of termination or death. In the event that the right to withhold payment of installments of the Artist's compensation accrues pursuant to paragraphs 13 or 14, or pursuant to paragraph 15 (other than by virtue of such a default by the Artist as would authorize a termination of this agreement by the Producer), at a time when the Artist has not yet received his earned compensation to that time, the Producer shall continue to pay said installments of compensation during the period of disability, force majeure or such default (notwithstanding the provisions of said paragraphs 13, 14 and 15 with respect to withholding payment of said installments) [61] until the Artist has received his earned compensation to that time, and at that point the Producer may then exercise its right to withhold payment of installments of the Artist's compensation during any

further period of disability, force majeure or such default. Payment of installments of the Artist's compensation during periods of disability, force majeure or such default pursuant to the provisions of this subparagraph (B) shall be without prejudice to the Producer's right to extend the respective year of the term for all or any part of the full period of disability, force majeure or such default as provided in paragraphs 13, 14 and 15; and if the amount of compensation which the Artist is entitled to receive for the respective year of the term, as provided in subparagraph (C) of this paragraph 16, is paid prior to the expiration of such year of the term, as extended, no additional weekly installments of compensation shall be payable to the Artist for the period or periods of extension (if any) of such year of the term which follow the date of payment of the last installment of the Artist's said compensation for such year of the term.

(C) Notwithstanding the exercise by the Producer during any year of the term of the right to withhold payment of any installments of the Artist's compensation, the Artist shall be entitled (subject to the provisions of subparagraph (D) of this paragraph 16) to receive for such year of the term the sum of One Hundred Thousand Dollars ($100,000.00) (less Twenty-two Thousand Two Hundred Twenty-two Dollars and Twenty-two Cents ($22,222.22) for any photoplay which is cancelled by the Producer pursuant to the provisions of subparagraph (B) of this paragraph 16),

regardless of the number of photoplays in which the Artist performs services hereunder during such year of the term, and any unpaid balance of such compensation for such year of the term [62] plus any additional amounts required to be paid by virtue of paragraphs 6, 12, 16(E), 18 and 25 hereof shall be due and payable to the Artist within one (1) week after the expiration of such year of the term, or if any of said additional amounts have not yet accrued, then (as to such amounts) when they accrue.

(D) In the event that this agreement is terminated pursuant to any of the provisions of Paragraphs 13, 14 or 15 hereof, or in the event of the death of the Artist prior to the date which would otherwise be the date of expiration of the term, the Producer shall be obligated to pay (a) any and all installments of the Artist's compensation which have theretofore become due but have not been paid, and (b) any and all additional amounts required to be paid by virtue of Paragraphs 6, 12, 16(E), 18 and 25; and in the further event that as of the date of termination or death the earned compensation of the Artist (as defined in Subparagraph (B) of this Paragraph 16) exceeds the aggregate of the installments of compensation theretofore actually received by the Artist plus the arrearages referred to in clause (a) just above, if any, to be paid as aforesaid, the Producer shall also pay the Artist the amount of such excess. All payments required to be made pursuant to this Subparagraph (D) shall, if theretofore accrued, be made to the Artist

within one (1) week following the date of termination or (in case of the death of the Artist) shall be made to the Artist's estate within one (1) week following receipt by the Producer of notice of appointment of the Artist's executor or of the administrator of his estate, and if not theretofore accrued, shall be made when they become due.

(E) (a) If the Artist commences the performance of his services in a photoplay hereunder and the production of such photoplay is abandoned by the Producer for any cause or the Artist is taken out of the photoplay by the Producer for any cause before the Artist has substantially completed the portrayal of his role therein, such photoplay in either such event being hereinafter in this [63] Subparagraph (E) designated as an "incomplete photoplay," such photoplay shall not be counted as one of the full quota of photoplays hereunder.

(b) If, in addition to such incomplete photoplay or photoplays, the Artist completes or substantially completes the portrayal of his role in the full quota of photoplays for the year of the term in which such incomplete photoplay or photoplays were produced, he shall be entitled to additional compensation for any such incomplete photoplay or photoplays. Such additional compensation shall be computed at the rate of One Thousand Nine Hundred Twenty-Three Dollars and Eight Cents ($1,923.08) per week and shall be payable for [64] the period that the Artist rendered services in connection with such incomplete photoplay, less any portion of said period during which the Artist's

services could not be utilized by virtue of force majeure or the Artist's disability or the Artist's default. Any such additional compensation shall be due and payable within one (1) week following the expiration of the year of the term in which such incomplete photoplay was produced.

(c) In any event, if any incomplete photoplay or any part thereof is thereafter released and the Artist appears therein in any scene or scenes whatsoever the Artist shall thereupon forthwith be entitled to all of the benefits of Paragraph 26 hereof in connection with such incomplete photoplay or part thereof and shall likewise (unless the abandonment or removal of the Artist was caused solely by a refusal of the Artist to perform his services in the production of such photoplay as required by this agreement) forthwith be paid an additional sum which shall be the same percentage (but not to exceed 100 per cent) of Twenty-Two Thousand Two Hundred Twenty-Two Dollars and Twenty-Two Cents ($22,222.22) as the number of days on which the Artist rendered services in connection with such incomplete photoplay is of the total number of days which the production schedule called for the Artist to render actual services, less, however, any additional compensation which had theretofore been paid to Artist in connection with such incomplete photoplay pursuant to Subdivision (b) of this Subparagraph (E).

(F) The making of any payment or payments by the Producer to the Artist pursuant to any pro-

vision of this agreement shall be without prejudice to the rights of the Producer for equitable relief or at law, for damages or otherwise, by virtue of any default hereunder by the Artist which may have occurred prior to the making of such payment or payments; and similarly the acceptance by the Artist of any payment or payments made by the Producer to the Artist [65] pursuant to any provision of this agreement shall be without prejudice to the rights of the Artist for equitable relief or at law, for damages or otherwise, by virtue of any default hereunder by the Producer which may have occurred prior to the receipt of such payment or payments.

(G) In the event of the termination of this agreement pursuant to the exercise by either party of any right of termination, all further rights of the Producer to the services of the Artist hereunder shall terminate (except as provided in Paragraph 12 hereof), including all further rights of the Producer to the services of the Artist pursuant to Paragraph 27 hereof, but all rights herein granted to the Producer in and to the results and proceeds of the services of the Artist and the right to use the name, voice and likeness of the Artist for advertising and publicity purposes in connection with his motion pictures, shall remain vested in the Producer notwithstanding any such termination, and the Producer agrees to continue to comply with the provisions of Paragraph 26 hereof.

17. All "character" or "period" wearing apparel (except "western" wearing apparel) necessary for the portrayal of any role hereunder by the Artist shall be furnished by the Producer. All other wardrobe and wearing apparel necessary for the performance of the Artist's services hereunder shall be furnished by the Artist. Any costumes, apparel or other articles furnished or paid for by the Producer pursuant to this Agreement or otherwise shall be deemed to be furnished to the Artist solely for the Artist's use hereunder and shall be returned promptly to the Producer.

18. The services of the Artist hereunder are to be rendered at such place or places within the United States as may from time to time be designated by the Producer. When the Artist is required to render his services at any place beyond twenty-five (25) miles from Producer's North Hollywood studios, the Producer agrees to furnish [66] first-class meals and transportation for the Artist during and on account of the rendition of such services and where, in the judgment of the Producer, it is necessary for the Artist to remain at such place overnight, the Producer agrees to furnish first-class lodging for the Artist. Likewise the Producer shall at its own expense transport to any such place the Artist's horse, "Trigger," (it being understood that the Artist may use one or more of several "Triggers") and special equipment furnished by the Artist in connection with any photoplay produced hereunder, but the Artist shall permit the Producer

to use his horse truck for the purpose of transporting "Trigger," as provided in Paragraph 25 hereof.

19. Nothing in this agreement shall be construed so as to require the commission of any act contrary to law, and whenever there is any conflict between any provision of this agreement and any material present or future law, ordinance or administrative, executive or judicial regulation, order or decree, or amendment thereof, contrary to which the parties have no legal right to contract, the latter shall prevail, but in such event the affected provision or provisions of this agreement shall be modified only to the extent necessary to bring them within the legal requirements and only during the time such conflict exists.

20. The Artist warrants that he is now a member in good standing of Screen Actors Guild, Inc., and agrees that during [67] the entire term of this agreement during such period or periods as it may be lawful for the Producer to require the Artist so to do, the Artist will remain or become and remain a member in good standing of the properly designated labor organization or organizations (as defined and determined under the applicable law) representing persons performing services of the type and character that are required to be performed by the Artist hereunder.

21. The Producer may transfer or assign this agreement to any company which owns or controls

a majority of its stock or to any company with which it may be merged or consolidated or which may acquire all or substantially all of its stock and/or property or to any other corporate successor of the Producer, and this agreement shall inure to the benefit of and be binding upon the Producer and such successors or assigns. If this agreement is assigned, in accordance with the foregoing provisions, all references herein to the Producer shall likewise be deemed to be references to the assignee.

22. The Artist hereby authorizes the Producer to deduct from each installment of compensation to the Artist hereunder an amount equal to one-half of one per cent (½%) of the gross amount thereof and to pay the amount so deducted to the Motion Picture Relief Fund of America, Inc. The Producer shall also have the right, as the Artist's employer, to deduct and withhold from the Artist's compensation the amounts required to be deducted and withheld by the Producer as the Artist's employer by any present or future law, ordinance or administrative, executive or judicial regulation, order or decree, or amendment thereof, requiring the withholding or deduction of compensation.

23. No waiver by the Producer or the Artist of any breach of any covenant or provision of this agreement shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant or provision.

24. All notices which the Producer is required or may [68] desire to serve upon the Artist under

or in connection with this agreement may be served by addressing them to the Artist in care of Mr. W. Arthur Rush, Suite 116 NBC-Radio City, Sunset and Vine, Hollywood 28, California, or at such other address as the Artist may hereafter designate to the Producer from time to time in writing, and by depositing them so addressed, registered and postage prepaid, in the United States mail in Los Angeles or North Hollywood, California, or by sending them so addressed by telegraph or cable. The deposit of any notice in the United States mail in Los Angeles or North Hollywood, California, registered and postage prepaid, addressed as aforesaid, or the delivery of any notice to the telegraph or cable office in Los Angeles or North Hollywood, California, addressed as aforesaid and prepaid, shall constitute service of such notice on the Artist, and the time of receipt of such notice by the Post Office as indicated on the registry receipt or the time of delivery of such notice to the telegraph or cable office as indicated by the telegraph or cable company on the copy of the telegram or cable, shall be the time of service of such notice. All notices which the Artist is required or may desire to serve upon the Producer under or in connection with this agreement may be served by addressing them to the Producer at 4024 Radford Avenue, North Hollywood, California, or at such other address as the Producer may hereafter designate to the Artist from time to time in writing, and by depositing them so addressed, registered and postage prepaid, in the United States mail in Los Angeles, Hollywood or

Beverly Hills, California, or by sending them so addressed by telegraph or cable. The deposit of any notice in the United States mail in Los Angeles, Hollywood or Beverly Hills, California, registered and postage prepaid, addressed as aforesaid, or the delivery of any notice to the telegraph or cable office in Los Angeles, Hollywood or Beverly Hills, California, addressed as aforesaid and [69] prepaid, shall constitute service of such notice on the Producer and the time of receipt of such notice by the Post Office as indicated on the registry receipt or the time of delivery of such notice to the telegraph or cable office as indicated by the telegraph or cable company on the copy of the telegram or cable, shall be the time of service of such notice. In the event that any such notice is mailed, telegraphed or cabled from a location other than those hereinabove specifically authorized, such notice shall not be effective until actually received by the addressee. Either party hereto may also (in lieu of or in addition to the aforementioned mailing, telegraphing or cabling) deliver any notice to the other party in writing personally.

25. In addition to the compensation elsewhere herein provided for, the Producer agrees to pay the Artist the sum of Five Hundred Dollars ($500.00) for each photoplay in which he renders any services hereunder as consideration for the use of the Artist's "western" wardrobe, his horse, "Trigger," (it being understood that the Artist may use one or more of several "Triggers"), special silver saddles, horse truck, and other equipment furnished by

the Artist in connection with the production of said photoplays (including his house trailer, if he should desire the use of a house trailer). The Artist agrees to furnish the equipment mentioned, including all such equipment as he has customarily furnished in the past, for said consideration.

26. The Producer agrees to give the Artist and his horse, "Trigger," top and first star billing on the positive prints of each photoplay in which the Artist appears hereunder, and to give the Artist and his horse, "Trigger," top and first star billing in all paid advertising and paid publicity issued by the Producer in connection therewith. Such billing need not appear before the title of the photoplay. No other member of the cast shall be given credit on said positive prints or in said advertising or publicity, in type as large as or larger than that [70] used for the name of the Artist, except that any co-star or co-stars may be given credit in type as large as that used for the Artist, and the name of such co-star or co-stars may appear on the same line as the name of the Artist. The Producer shall not have the right to give co-starring credit to any other member of the cast of any such photoplay without the Artist's consent; provided, however, that the Producer may, without the Artist's consent, co-star any star engaged by the Producer for the particular photoplay, who has been theretofore regularly starred or co-starred in photoplays regularly acceptable in de luxe or "A" motion picture theaters. The Producer shall not be obligated to give the Artist or his horse, "Trigger," credit in

so-called "teaser" or special advertising, or in advertising, publicity or exploitation relating to the story upon which the respective photoplay is based, any other members of the cast, the director, the author or similar matters, or in so-called "group" advertising, or in so-called "trailer" or other advertising on the screen, nor at any time when the Artist fails to conduct himself in the manner provided in Paragraph 5 hereof. No casual or inadvertent failure to give the Artist credit in advertising and publicity as provided in this paragraph shall constitute a breach of this agreement.

27. In consideration of the execution of this agreement by the Producer, the Artist hereby grants to the Producer the option to extend the employment of the Artist hereunder for an additional term of one (1) year from and after the expiration of the original term hereof, upon and subject to the same provisions set forth in this agreement (except as hereinafter provided), on condition, however, that at the time of exercising said option the Producer is not in default under this agreement. In the event that the Artist considers the Producer to be in default under this agreement at the time of exercising said option, the Artist shall notify the Producer thereof in writing within ten (10) days following service of the Producer's notice of exercise of [71] option, and shall specify in his notice, with particularity, the respects in which he considers the Producer to be in default. Should the Artist fail to serve such notice on the Producer within said period of ten (10) days the Producer shall not be deemed

to be in default hereunder insofar as its right to exercise said option is concerned, and said option shall be deemed to be validly exercised. If, having exercised said option, the Producer should be in default hereunder at the expiration of the original term, the Artist shall have the right to cancel the optional term by notifying the Producer in writing of the exercise of this right of cancellation not later than ten (10) days following the expiration of the original term. If any installment of compensation of the optional term shall become due during such ten (10) day period the Producer may withhold payment thereof until the expiration of such ten (10) day period, and if the Artist serves notice of exercise of such right of cancellation, such installment or installments shall, of course, not be payable. Such cancellation shall take effect as of the date of expiration of the original term, but the Producer shall continue to be entitled to the services of the Artist pursuant to Paragraph 12 hereof, if necessary. In the event that said option is exercised, the provisions of this agreement shall be deemed to be modified in the following respects during the optional term:

(a) The amount of compensation payable to the Artist for this optional term shall be the sum of One Hundred Thousand Dollars ($100,000.00), payable in fifty-one (51) installments of One Thousand Nine Hundred Twenty-Three Dollars and Eight Cents ($1,923.08), and one installment of One Thousand Nine Hundred Twenty-Two Dollars and Ninety-Two Cents

($1,922.92), weekly in the manner provided in Paragraph 11 hereof.

(b) The maximum number of photoplays for which the Producer shall be entitled to the Artist's services during this optional term shall be four (4); provided, however, that if the Artist is engaged in rendering services in connection with a photoplay hereunder at the expiration of the original term, and his services in such photoplay are not then completed, the Producer shall have the right to require the completion of such services in connection with such photoplay during the optional term and such photoplay [72] shall not be counted as one of said four (4) photoplays.

(c) All references in this agreement to Twenty-Two Thousand Two Hundred Twenty-two Dollars and Twenty-two Cents ($22,-222.22) shall be deemed to be changed to Twenty-Five Thousand Dollars ($25,000) insofar as this optional term is concerned.

Said option may be exercised at any time, but not later than ninety (90) days prior to the date of expiration of the original term. If said original term is extended by reason of the extension of any year of said term pursuant to any provision of this agreement, said period of ninety (90) days shall be computed from the expiration of the term as extended unless the right of extension is exercised subsequently to the date which would otherwise have been the commencement date of such ninety (90) day period, in which event such ninety (90)

day period shall be computed (for the purpose only, however, of determining the latest date for the exercise of said option) as though the right of extension had not been exercised. The exercise of said option by the Producer shall not be deemed to be a waiver by the Producer of any prior breach of this agreement by the Artist, whether known or unknown, or a ratification by the Producer of any prior course of conduct of the Artist. Notice of exercise of said option shall be in writing.

28. This agreement contains the entire contract between the parties hereto, and each party acknowledges that neither has made (either directly or through any agent or representative) any representations or agreements in connection with this employment not specifically set forth herein. This agreement may be modified or amended only by agreement in writing executed by the Artist and the Producer, and not otherwise.

29. All contracts of employment, and amendments thereto, heretofore entered into between the Producer and the Artist which have not already expired by reason of lapse of time or otherwise, including, but not limited to, that certain contract of employment between the Producer and the Artist (then known as Leonard Slye), [73] dated October 13, 1937, as amended, are hereby cancelled and terminated effective as of the date of execution of this agreement, and each of the parties thereto is hereby released from all further obligations, agreements, claims, demands and liabilities thereunder or with respect thereto except that the Producer is

not released from the obligation to give screen and advertising credit to the Artist to the extent and subject to the conditions provided in such contract or contracts. Specifically, but without limiting the generality of the foregoing, the Producer hereby releases the Artist from the obligation to render any further services under any such contract or contracts and from all liability or alleged liability for any breach or alleged breach of any such contract, and the Artist hereby releases the Producer from the obligation to pay any further conpensation to the Artist and from all liability with respect thereto under any such contract or contracts. Such termination of said contract or contracts is without prejudice to the retention by the Producer, and the Producer hereby expressly reserves, all of its rights in and to all of the results and proceeds of the services heretofore rendered by the Artist for the Producer, and its right to use the name, voice and likeness of the Artist for advertising and publicity purposes in connection with his motion pictures, and the Artist hereby acquiesces in and agrees to said reservation of rights.

In Witness Whereof, the parties hereto have executed this agreement as of the day and year first above written.

REPUBLIC PRODUCTIONS, INC.,

By /s/ [Indistinguishable],
Asst. Secy.

/s/ ROY ROGERS.

snr:md 2-27-48. [74]

EXHIBIT E

North Hollywood, California
December 19, 1949

Mr. Roy Rogers,
c/o Art Rush, Inc.,
Vine and Selma,
Los Angeles, California.

Dear Mr. Rogers:

The following will constitute our agreement amending as follows, for good and valuable consideration, that certain contract of employment between us, dated February 28, 1948, as amended:

1. We agree that you shall have one additional month free period during the original term of said contract, said additional free period to be the month of February, 1950. In consideration therefor, it is agreed that the optional term of said contract (to wit, the term provided for in Paragraph 27 of said contract, the option therefor having been exercised by us by notice, dated September 1, 1949), is hereby extended for a period of one month.

2. The foregoing extension shall have no effect on the amount, rate or time of payment of the compensation now provided for in said contract, as heretofore amended, and no compensation shall be payable to you with respect to said extension of one month. In other words, we shall be entitled to your services during said extension of one month and you agree to render such services (subject to the conditions and limitations specified in said contract

of employment, as heretofore amended) without additional compensation.

3. You have now rendered services in the production of ten (10) complete photoplays under said contract, leaving one additional photoplay for which we are entitled to your services during the original term of said contract. It is hereby agreed that we shall have the right to commence the production of said eleventh photoplay during said optional term, without affecting the number of photoplays for which we are entitled to your services during said optional term. In other words, we shall remain entitled to your services in six (6) photoplays during said optional term, in addition to said eleventh photoplay, subject, of course, to the terms and conditions of said contract, as amended. Pursuant to the [75] foregoing, production of said eleventh photoplay is presently scheduled to commence on March 1, 1950.

Except as expressly provided herein, said contract, as heretofore amended, is not changed or amended in any particular, and remains in full force and effect.

Kindly indicate your approval and acceptance of the foregoing by signing this agreement in the space provided below.

Yours very truly,

REPUBLIC PRODUCTIONS, INC.,

By /s/ [Indistinguishable.]

Approved and Accepted:

/s/ ROY ROGERS.

snr:dd 12-28-49. [76]

EXHIBIT F

June 8, 1951.

Mr. J. J. Van Nostrand, Jr., Vice Pres. Tel. Dir.,
Sullivan, Stauffer, Colwell & Bales, Inc.,
6253 Hollywood Boulevard,
Hollywood, California.

Dear Mr. Van Nostrand:

It is our pleasure to announce that we have the following pictures that are now available for television. Additional groups of pictures will be announced in the near future.

1. Roy Rogers Productions starring Roy Rogers and Trigger. (53½ min. ea.)

2. Gene Autry Productions starring Gene Autry, Gabby Hayes and an all star cast. (53½ min. ea.)

3. Red Ryder Productions starring Wild Bill Elliott, Rocky Lane, Gabby Hayes, and Bobby Blake as Little Beaver. (53½ min. ea.)

4. Family and Preferred DeLuxe Feature Productions with all star casts. (53½ min. ea.)

5. Pioneer Western Features starring the Three Mesquiteers. (53½ min. ea.)

6. Frontier and Lone Star Western Features starring Don Barry and Sunset Carson. (53½ min. ea.)

7. The Plainsmen Western Features starring Johnny Mack Brown and Bob Steele.

8. World's Greatest Serials—tailored per episode to the 30 minute spot (26½ min. ea.) or can be licensed in their original length of 18 to 24 minutes per episode.

All pictures will be licensed in groups of 13, 26 or 52.

So you can be among the first to see what we are offering for immediate televising you are cordially invited to a screening at Republic Studios, Tuesday, June 19th, at 2 p.m. (4024 Radford Avenue, North Hollywood).

No sales will be negotiated before June 25th so as to give everyone an equal opportunity.

Will you kindly acknowledge by phone or letter if you or your representative can be present at the above screening.

Very truly yours,

.....,

Earl R. Collins, Pres.,
Hollywood Television
Service, Inc.

ERC-mm

[Endorsed]: Filed July 3, 1951. [77]

[Title of District Court and Cause.]

AMENDMENT TO COMPLAINT

Comes now the plaintiff, and leave of Court having been first had and obtained, amends his Complaint as of the date of the filing of the Answer of defendants, Republic Productions, Inc., Republic Pictures Corporation and Hollywood Television Service, Inc., in the following respects, to wit:

(1) In the title or caption of the Complaint, delete the name "Doe One" and add the name "Republic Pictures Corporation, a New York corporation."

(2) In Paragraph IV of the Complaint, delete the name "Doe One" and at the end of Said Paragraph IV add the following two new sentences, to wit:

> "Plaintiff is informed and believes and therefore alleges that the defendant, Republic [78] Pictures Corporation is a corporation duly organized and existing under the laws of the State of New York and is a citizen of said State; that said defendant, Republic Pictures Corporation, will in this Complaint hereinafter, for convenience, be referred to as Republic Pictures or Defendant Republic Pictures. Plaintiff is informed and believes and therefore alleges that defendant, Republic, and defendant, Hollywood Television, are each wholly owned subsidiaries of defendant, Republic Pictures, and that said Republic Pictures claims some interest in the subject matter of this action."

(3) At the end of Paragraph XIII of the Complaint, add the following sentence, to wit:

"Plaintiff is informed and believes and therefore alleges that between on or about February 1, 1950, and June 8, 1951, the date of said letter offer, defendants declared that they had the right to televise for the purpose of commercial advertising, the motion pictures starring the plaintiff and his horse, Trigger, and during said period from time to time announced their intention to so televise said motion pictures, or authorize others to so televise said motion pictures, without the consent of and contrary to the rights of plaintiff."

(4) In the middle of Paragraph XVI of the Complaint, delete the words "the defendant, Republic and the defendant, Hollywood Television, or one of them," and insert in lieu thereof the words "the defendants, Republic Pictures and Hollywood Television, with the knowledge and acquiescence of Republic." [79]

(5) In the first sentence of Paragraph XVII of the Complaint delete the words "Republic and Hollywood Television," and in the second sentence of said Paragraph XVII delete the words "and malicious" in both instances where said words appear.

(6) At the end of Paragraph XIX of the Complaint add the following sentence, to wit:

"For the same reasons defendant, Republic Pictures, has also so waived any such rights

which it might otherwise have had or claimed to have had."

(7) At the end of Paragraph XX of the Complaint, add the following sentence, to wit:

"For the same reasons defendant, Republic Pictures, is also so estopped."

(8) In the first part of Paragraph XXI of the Complaint, delete the words "defendant, Republic, and has" and insert in lieu thereof "defendant, Republic Pictures, and that both Republic Pictures and the said Hollywood Television"; and in the latter part of Paragraph XXI, delete the words "the said Hollywood Television's use" and insert in lieu thereof the words "the said Republic Pictures or Hollywood Television's use."

(9) In the first part of Paragraph XXIII of the Complaint, delete the words "That the above-mentioned threats of defendants, Republic and Hollywood Television," and insert in lieu thereof "The threats of defendants."

(10) Delete all of Paragraph XXIV.

(11) In Paragraphs (1), (2), (3) and (4) of the prayer of the Complaint, insert the words "Republic Pictures Corporation" just ahead of the words "Republic Productions, Inc."

(12) Delete Paragraph (5) of the prayer of the Complaint and in lieu thereof insert the following:

"(5) For damages in the amount of One Hundred [80] Thousand Dollars ($100,000) and

such additional amounts of damages as may have accrued to the date of the rendition of judgment herein."

GIBSON, DUNN &
CRUTCHER,
HENRY F. PRINCE,
FREDERIC H. STURDY,
SAMUEL O. PRUITT, JR.,
RICHARD H. WOLFORD,
By /s/ FREDERIC H. STURDY,
Attorneys for Plaintiff.

It Is Hereby Stipulated by and between counsel for the respective parties that the foregoing Amendment to the Complaint may be filed and that the allegations thereof, except to the extent that they are admitted by the Answer of the defendants now on file, shall be deemed to be denied by said defendants.

GIBSON, DUNN &
CRUTCHER,
HENRY F. PRINCE,
FREDERIC H. STURDY,
SAMUEL O. PRUITT, JR.,
RICHARD H. WOLFORD,
By /s/ FREDERIC H. STURDY,
Attorneys for Plaintiff.

FRANK B. BELCHER,
LOEB AND LOEB,
By /s/ HERMAN F. SELVIN,
Attorneys for Defendants.

It Is So Ordered. October 3, 1951.

/s/ PEIRSON M. HALL,
Judge of the United States
District Court.

[Endorsed]: Filed October 3, 1951. [81]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above-entitled cause having duly come on for trial on Thursday, the 13th day of September, 1951, at the hour of 10:00 o'clock a.m., before the Honorable Peirson M. Hall, Judge Presiding; Frederic H. Sturdy, Esq., Samuel O. Pruitt, Jr., Esq., and Richard H. Wolford, Esq., of Gibson, Dunn & Crutcher, appearing as counsel for the plaintiff, and Herman F. Selvin, Esq., and Harry L. Gershon, Esq., of Loeb & Loeb, and Frank B. Belcher, Esq., of Jennings & Belcher, appearing as counsel for defendants, and the trial having been concluded on Friday, October 12, 1951, and oral argument by counsel for the respective parties having been concluded on Wednesday, October 17, 1951, and the cause having been submitted to the Court on the latter date, and the Court having heard and considered the evidence both oral and documentary offered by the respective parties, and the Court, in open court, having orally announced its decision in favor of the plaintiff on October 18, 1951, and being

fully advised [82] in the premises the Court now makes its Findings of Fact as follows:

Findings of Fact

(1) The plaintiff, Roy Rogers, was at the time of the commencement of the within action and now is a citizen and resident of the County of Los Angeles, State of California.

(2) The defendant, Republic Productions, Inc., was at the time of the commencement of the within action and now is a corporation duly organized and existing under the laws of the State of New York and is a citizen of said State. The defendant, Hollywood Television Service, Inc., was at the time of the commencement of the within action and now is a corporation duly organized and existing under the laws of the State of Delaware and is a citizen of said State. Said defendant, Hollywood Television Service, Inc., was organized on or about November, 1950, for the express purpose of selling, leasing, or otherwise distributing through the medium of television, certain of the motion pictures formerly produced by the defendant Republic Productions, Inc. The defendant Republic Pictures Corporation was at the time of the commencement of the within action and now is a corporation duly organized and existing under the laws of the State of New York and is a citizen of said State. The defendants Republic Productions, Inc., and Hollywood Television Service, Inc., were at the time of the commencement of the within action and now are each wholly owned subsidiaries of defendant Republic Pictures Cor-

poration. The rights of defendants Republic Pictures Corporation and Hollywod Television Service, Inc., and each of them, insofar as the subject matter of this action is concerned, are no greater than and are subject to at least the same limitations as the rights of defendant Republic Productions, Inc.

(3) The within action is a civil action wherein the matter in controversy exceeds the sum or value of Three Thousand Dollars ($3,000.00) exclusive of interest and costs. [83]

(4) Plaintiff adopted the name "Roy Rogers" for all professional purposes in early 1938 and has at all times since said date been known professionally as Roy Rogers. By change of name proceedings plaintiff caused his name to be formally and legally changed to "Roy Rogers" in 1942. As against the defendants in this action and each of them and anyone claiming through or under them, or any of them, the plaintiff is the sole and exclusive owner of his name "Roy Rogers" and his voice and likeness and of the name and likeness of his horse "Trigger" for any and all commercial advertising purposes whatsoever, as said term "commercial advertising purpose" is defined in Finding No. 13.

(5) Plaintiff has been for many years and now is an internationally known motion picture, stage, radio and rodeo star and has achieved and maintained for many years and now has a great and widespread fame and prominence as an actor, singer, rodeo performer, horseman and personality.

Plaintiff has been for many years and now is well known and identified in the public mind throughout the United States and many foreign countries as "Roy Rogers." Plaintiff's fame as a western star has been and now is such that at all times since 1942 he has also been and now is well known and identified in the public mind as "King of the Cowboys."

(6) On or about October 13, 1937, the plaintiff Roy Rogers whose true name was then Leonard Slye, entered into a written Agreement with the defendant Republic Productions, Inc. Said Agreement was and is in printed form, except for a few typewritten words and figures, and was prepared by counsel for the defendants Republic Productions, Inc., and Republic Pictures Corporation. At and before the time of the signing of said Agreement the plaintiff was not represented by any attorney or agent acting for or on behalf of plaintiff. A full, true and correct copy of said Agreement was offered and received in evidence as plaintiff's Exhibit No. 17 and is attached hereto marked Exhibit A and made a part hereof, and [84] for convenience and brevity will hereinafter in these Findings sometimes be referred to as the "1937 Agreement." By various letter agreements, which the Court finds to be immaterial to the dispute herein involved, the term of the 1937 Agreement was extended to on or about February 28, 1948.

(7) During the term of the 1937 Agreement the defendant Republic Productions, Inc., produced

a total of sixty-three (63) motion pictures in each of which the plaintiff Roy Rogers was starred in the leading male role. A true and correct list of the titles of said motion pictures and the dates of completion of photography thereof is set forth in Exhibit B which is attached hereto and made a part hereof.

(8) On or about March 9, 1948, the plaintiff Roy Rogers entered into a written Agreement with the defendant Republic Productions, Inc. A full, true and correct copy of said Agreement, which bears the date of February 28, 1948, was offered and received in evidence as plaintiff's Exhibit No. 20 and is attached hereto marked Exhibit C and made a part hereof, and for convenience and brevity will hereinafter in these Findings sometimes be referred to as the "1948 Agreement." The term of said 1948 Agreement commenced on March 1, 1948, and ended on or about May 27, 1951.

(9) During the term of the 1948 Agreement the defendant Republic Productions, Inc., produced a total of eighteen (18) motion pictures in each of which the plaintiff Roy Rogers was starred in the leading male role. A true and correct list of the titles of said motion pictures and the dates of completion of photography thereof is set forth in Exhibit D which is attached hereto and made a part hereof.

(10) During the period of time covered by the terms of the 1937 Agreement and the 1948 Agreement or one of them, in addition to the eighty-one (81) motion pictures in which the plaintiff was starred (listed in Exhibits B and D hereto), the defendant Republic [85] Productions, Inc., produced four (4) feature length motion pictures entitled respectively, "Dark Command," "Lake Placid Serenade," "Brazil" and "Hit Parade of 1947," in each of which the plaintiff appeared incidentally but did not star and during the term of the 1937 Agreement the plaintiff appeared in two (2) additional feature length motion pictures entitled respectively "Hollywood Canteen" and "Melody Time," which two motion pictures were produced by motion picture producers (not parties to this suit) pursuant to the "loan-out" provisions of the 1937 Agreement.

(11) During the period 1938 to 1951, both inclusive, plaintiff has, with the knowledge and encouragement of defendants Republic Productions, Inc., and Republic Pictures Corporation, made substantially in excess of 640 personal appearances, more than 563 rodeo appearances and substantially in excess of 242 radio appearances. Said defendants and plaintiff have from time to time each expended large sums of money in publicizing plaintiff in connection with some of said appearances. Through the expenditure of said sums of money, but primarily through and because of his own personality, industriousness, ability, performance, and exem-

plary personal conduct and private life, plaintiff has built up and maintained over a period of many years, and he now enjoys in the mind of the public, a great and widespread popularity, trust, good will, confidence and esteem for himself personally and for his name "Roy Rogers."

(12) For more than thirteen (13) years plaintiff has continuously used a horse named "Trigger" in his various professional appearances, as well as certain "doubles" for said horse which doubles have also been known as "Trigger"; and the said name and horse "Trigger" has been during said entire period and now is associated in the public mind exclusively with the plaintiff Roy Rogers. For many years the said Trigger and said doubles have been and they now are owned, maintained and trained by the plaintiff at his own sole cost and expense. The rights of the respective parties to the [86] within action, as herein determined, apply equally both to Roy Rogers and to Trigger, and hereinafter in these Findings, for convenience and brevity, all references to the use of, or the rights or obligations of the parties hereto with respect to the use of, the name, voice and likeness (or any thereof) of plaintiff shall also be deemed to include and apply equally to the name and likeness (or either thereof) of plaintiff's horse Trigger.

(13) The term "advertising, commercial and/or publicity purposes" as used in the fourth sentence of paragraph 4 of the 1937 Agreement and the terms "commercial advertising" and "commercial tie-up"

as used in subparagraph (B) of paragraph 4 of the 1948 Agreement were intended by the parties to be and they are synonymous with the term "commercial tie-ups for products of every kind or character (other than motion pictures)" as used in subparagraph (C) of paragraph 4 of said 1948 Agreement. Said terms were each intended to mean, and throughout the terms of the said 1937 Agreement and the said 1948 Agreement (until on or about February 1, 1950) were construed by the parties by their acts and conduct to mean, and they do mean any use whatsoever of the name, voice or likeness of the plaintiff Roy Rogers (whether in still photographs or in motion pictures or otherwise or at all, and whether used as a trade name or as an endorsement, either direct or implied, or as a so-called "attention-getter" or otherwise or at all, and whether used on or in radio, television, newspapers, magazines, billboards, car cards or any other advertising medium or media whatsoever) in association with or to advertise or otherwise promote any service or product whatsoever except only (a) the defendant Republic Productions, Inc., as a producer of motion pictures and/or (b) any of the motion pictures produced by said defendant under either the 1937 Agreement or the 1948 Agreement. For convenience and brevity said terms and the meaning thereof, as in this Finding defined and limited, shall hereinafter (in these Findings and Conclusions and in the Judgment to be entered herein) be referred to as "commercial advertising" or "commercial advertising [87] purposes"; pro-

vided however, that for the reasons set forth in Findings Nos. 39 and 41, said terms "commercial advertising" and "commercial advertising purpose" as used in these Findings and Conclusions and in the Judgment to be entered herein, do not include the use as feature length motion pictures of any of the following four (4) feature length motion pictures produced by defendant Republic Productions, Inc., and in which the plaintiff incidentally appeared but did not star: "Dark Command," "Lake Placid Serenade," "Brazil" and "Hit Parade of 1947," and likewise do not include the use of any of the eighty-one (81) feature length motion pictures listed in Exhibits B and D hereto in theaters or any other place where an admission fee is or has been customarily charged for the entertainment or for admission to the entertainment (either in the customary manner by a projector in such place or by means of a television transmission or projection onto a screen or screens in such place) or on television screens where a fee is charged to the viewers of such screens for the privilege of viewing such motion pictures, even though some incidental advertising may also be shown on the screens in said theaters or other places or on said television screens.

(14) In 1938, the plaintiff, Roy Rogers, commenced a business based upon the use of his name, voice and likeness for commercial advertising purposes. In the development and maintenance of plaintiff's said commercial advertising business the plaintiff has at all times exercised great care, dili-

gence and discretion in determining the number, type, character and quality of the products and services with which he has permitted his name, voice or likeness to be associated, and at no time has plaintiff recommended, approved or endorsed, either directly or impliedly, or permitted his name, voice or likeness to be associated with or used in connection with, any products or services except those which the plaintiff, in good faith, believed to be of good quality, suitable for safe purchase and use by the public, and of a character consistent with his widespread reputation as a wholesome cowboy of high moral character.

(15) At all times since early 1938, the plaintiff has, [88] with the knowledge, encouragement and consent of the defendants, Republic Productions, Inc., and Republic Pictures Corporation, asserted and exercised exclusive control over, and the exclusive right to receive and retain and plaintiff has received and retained any and all monetary consideration from, the use of his name, voice or likeness for commercial advertising purposes.

(16) At all times since 1938, whenever anyone, including but not limited to the defendants, Republic Productions, Inc., and Republic Pictures Corporation, has ever desired to use or authorize others to use plaintiff's name, voice or likeness for any commercial advertising purpose, all of said persons, including said defendants, have always first requested the consent of plaintiff before making such use, and plaintiff has always controlled the granting

of such consents; provided however that from and after on or about February 1, 1950, the defendants, Republic Productions, Inc., Republic Pictures Corporation and Hollywood Television Services, Inc., made the various claims set forth in Findings Nos. 18, 19 and 47, respectively.

(17) Plaintiff's said commercial advertising business has been and now is of very great value and has in each year since 1945, and now is producing for him a substantially greater income than he has received in like periods for rendering services in motion picture work. The great value of said commercial advertising business, and the great value of plaintiff's name, voice and likeness for commercial advertising purposes, is to a very large extent due to the continuous discretion, care and control which plaintiff has always exercised in determining the extent to which, the manner in which and the product or service for or in connection with which his name, voice and likeness have been used for commercial advertising purposes, and the continued value of plaintiff's said commercial advertising business is directly dependent upon a continuance of such exclusive control by the plaintiff.

(18) On or about June 8, 1951, the defendant, Hollywood [89] Television Service, Inc., with the knowledge, consent and acquiescence of Republic Productions, Inc., and Republic Picture Corporation, caused to be mailed a letter, dated June 8, 1951, (a true and correct copy of which was offered and received in evidence as Plaintiff's Exhibit No.

30) to various advertising agencies and to various television networks and stations and thereby offered (for a valuable consideration to be paid to said defendant) for immediate telecasting certain of the said eighty-one (81) motion pictures listed in Exhibits B and D; and on or about June 19, 1951, and again on June 20, 1951, the defendant, Hollywood Television Service, Inc., with the knowledge, consent and acquiescence of defendants, Republic Productions, Inc., and Republic Pictures Corporation, reiterated its offer of said pictures (for a valuable consideration to be paid to said defendant) for immediate telecasting and offered to license said motion pictures in groups of thirteen (13), twenty-six (26) or fifty-two (52) and said offers contemplated that the name, voice and likeness of plaintiff, Roy Rogers, if the licensees of said motion pictures so desired, be regularly, repetitiously and systematically telecast to the viewing and listening public, free of charge, to such viewing and listening public, for commercial advertising purposes; and said offers also contemplated the customary, systematic and repetitious use of plaintiff's name and likeness in newspapers and other advertising media regularly and customarily used to advertise a licensee's or sponsor's program and the services or products advertised thereon. Said offers contemplated that all of said motion pictures would be reedited and shortened so that they each would have a running time of approximately fifty-three and one-half (53½) minutes and would therefore be made suitable for use on a one (1) hour television pro-

gram. The prices quoted by defendant, Hollywood Television Services, Inc., were quoted for said motion pictures in groups of thirteen (13), twenty-six (26) or fifty-two (52) at the rate of $30,000 per picture for one nationwide [90] telecast or $50,000 per picture for two such telecasts.

(19) Prior to the commencement of the within action, the plaintiff formally demanded that the defendants withdraw the written offer of June 8, 1951, and the additional oral offers of June 19, and 20, 1951, but defendants refused to comply with said demand, and said defendants then and at all times since have claimed and now claim that they have the absolute and unrestricted right to utilize and authorize others to utilize all or any of the motion pictures produced by defendant, Republic Productions, Inc., and in which the plaintiff appeared and any portions or portion thereof, in any manner and for any purpose or purposes whatsoever.

(20) The first sentence of Paragraph 4 of the 1937 Agreement was intended by the parties thereto to set forth and it does set forth the full extent of the only perpetual right granted by plaintiff to defendant, Republic Productions, Inc., to use or authorize others to use plaintiff's name, voice or likeness (whether in still photographs or in motion pictures or otherwise or at all) in or in connection with the advertising of any service or product whatsoever, and the parties intended said perpetual advertising right to be limited and it was limited

solely to the advertising of the defendant, Republic Productions, Inc., as a producer of motion pictures and any of the motion pictures produced by Republic Productions, Inc., under said 1937 Agreement.

(21) During the term of the 1937 Agreement, the sole and exclusive right to use plaintiff's name, voice and likeness for commercial advertising purposes was expressly and intentionally recognized and acknowledged by defendants, Republic Productions, Inc., and Republic Pictures Corporation, to be in, and was granted to, the plaintiff in lieu of additional salary and also in consideration of the substantial and valuable publicity and advertising which defendants, Republic Productions, Inc., and Republic Pictures Corporation, received from plaintiff in the course of the exercise by [91] plaintiff of said commercial advertising rights and as a result of plaintiff's other outside activities such as rodeos and other types of personal appearances in each and all of which plaintiff required and secured publicity and advertising for said defendants.

(22) By the 1948 Agreement, the parties thereto intended to and did terminate the 1937 Agreement as of on or about February 28, 1948, and intended to and did as of said date terminate all rights of defendant, Republic Productions, Inc., under said 1937 Agreement except those specifically reserved in the last sentence of Paragraph 29 of said 1948 Agreement.

(23) By the 1948 Agreement, and especially by the last sentence of paragraph 29 thereof, the

parties thereto understood, intended to agree and did agree with respect to all results and proceeds of the plaintiff's services under the 1937 Agreement (including but not limited to the sixty-three (63) motion pictures listed in Exhibit B) that the only right reserved by said defendant to use plaintiff's name, voice or likeness (whether in still photographs or in motion pictures or otherwise or at all) for advertising purposes was to be limited, and it was limited, solely to the advertising of the defendant Republic Productions, Inc., as a producer of motion pictures and of any of the motion pictures produced by Republic Productions, Inc., under either the said 1937 Agreement or said 1948 Agreement.

(24) By the 1948 Agreement, the parties thereto intended to and did recognize and acknowledge that the 1937 Agreement did not give Republic Productions, Inc., any perpetual right to use plaintiff's name, voice or likeness (whether in still photographs or in motion pictures or otherwise or at all) for commercial advertising purposes.

(25) The second sentence of subparagraph (A) of paragraph 4 of the 1948 Agreement was intended by the parties thereto to set forth and it does set forth the full extent of the only perpetual right granted by plaintiff to defendant Republic Productions, Inc., [92] to use or authorize the use of plaintiff's name, voice or likeness (whether in still photographs or in motion pictures or otherwise or at all) in or in connection with the advertising of

any service or product whatsoever, and the parties intended said perpetual advertising right to be limited and it was limited solely to the advertising of the defendant Republic Productions, Inc., as a producer of motion pictures and of any of the motion pictures produced by Republic Productions, Inc., under either the 1937 Agreement or under said 1948 Agreement.

(26) Subparagraph (B) of paragraph 4 of the 1948 Agreement was intended by the parties thereto to set forth and it does set forth the sole and only right granted by plaintiff to defendant Republic Productions, Inc., to use or authorize others to use plaintiff's name, voice or likeness for commercial advertising purposes and said subparagraph (B) was intended by the parties to and it does restrict and limit the right of the defendant Republic Productions, Inc., to use or authorize others to use the name, voice or likeness of plaintiff (whether in still photographs or in motion pictures or otherwise or at all) in or in connection with advertising.

(27) The paragraphs numbered "2" in the 1937 and 1948 Agreements, respectively, including but not limited to the definitions of "photoplays" appearing therein, were not intended to be and are not a grant of any rights in any of the motion pictures produced under either of said Agreements or any scene or sound track therefrom or any other portion thereof in which the name, voice or likeness of plaintiff appears or is used, and in any event were not intended to and do not grant any adver-

tising rights whatsoever. The words "television" and "television devices" appearing in the said definitions are synonymous and were not intended to and do not refer to or grant to the defendant Republic Productions, Inc., any right to telecast or broadcast for commercial advertising purposes any of the eighty-one (81) motion pictures (listed in Exhibits B and D hereto) or any scene or sound track therefrom or any other portion [93] thereof in which the name, voice or likeness of plaintiff appears or is used on either a "sustaining" basis or a "commercially sponsored" basis as said words "sustaining" and "commercially sponsored" are hereinafter defined in Findings Nos. 29 and 31.

(28) At the respective dates of execution of the 1937 Agreement and the 1948 Agreement, the parties intended the provisions therein in any way relating to "advertising, commercial and/or publicity purposes," "commercial advertising" and "commercial tie-ups" to be, and by their acts and conduct during the respective terms thereof construed said provisions to be, and said provisions were and are a limitation upon any and all of the provisions in either of said Agreements in any way relating to television productions, or to the broadcasting or transmission of plaintiff's name, voice or likeness by means of television, radio or otherwise, or to the exhibition or transmission of motion pictures by radio, television or other devices.

(29) A "sustaining" program is a program which is telecast or broadcast under the sponsor-

ship of and at the expense of the station or network presenting the program and where no announcements advertising any product or service (other than the station or network) are made or shown during or directly in connection with such programs, although so-called "station break commercials" may and customarily are made or shown immediately before, during, or immediately following such sustaining programs at the time when the so-called "station break" announcements identifying the station or network are made or shown.

(30) The use of any of the eighty-one (81) motion pictures (listed in Exhibits B and D) or any scene or sound track therefrom or any other portion thereof in which the name, voice or likeness of plaintiff appears or is used on either a sustaining television or sustaining radio program would be primarily for the purposes of advertising the station or network presenting such program, of attracting and building up a listening and/or viewing audience for the program [94] and the time period allotted to the program, and of selling such program and allotted time to a commercial sponsor or sponsors, and such use would be for commercial advertising purposes.

(31) A "commercially sponsored" program is one which is telecast or broadcast under the sponsorship of and at the expense of one or more sponsors and where announcements advertising the products or services of such one or more sponsors

(other than merely the station or network over which the program is being telecast or broadcast) are made or shown at one or more times during or in connection with the program, and as used in these Findings includes so-called "participating" programs, to wit, programs, the entertainment portions of which are furnished by the station or network and during or in connection with which so-called "spot commercials" advertising products or services of two or more sponsors (other than merely the station or network over which the program is being telecast or broadcast) are made or shown at various times.

(32) The telecasting or broadcasting of any of the eighty-one (81) motion pictures (listed in Exhibits B and D) or any scene or sound track therefrom or any other portion thereof in which the name, voice or likeness of plaintiff appears or is used, or of any still photograph of plaintiff or any recording of plaintiff's voice, on either a sustaining or commercially sponsored basis, or the use of plaintiff's name, voice or likeness in any other advertising medium or media to advertise any service or product whatsoever (except only Republic Productions, Inc., as a producer of motion pictures and any of the motion pictures produced by Republic Productions, Inc., under either the 1937 Agreement or the 1948 Agreement) would constitute a use of plaintiff's name, voice or likeness for commercial advertising purposes.

(33) The telecasting or broadcasting of any of the eighty-one (81) motion pictures (listed in Exhibits B and D) or any scene or sound track therefrom or any other portion thereof in which the [95] name, voice or likeness of plaintiff appears or is used, or of any still photograph of plaintiff or any recording of plaintiff's voice, on either a sustaining or commercially sponsored basis, or the use of plaintiff's name, voice or likeness in any other advertising medium or media, to advertise any service or product whatsoever (except only Republic Productions, Inc., as a producer of motion pictures and any of the motion pictures produced by Republic Productions, Inc., under either the 1937 Agreement or the 1948 Agreement) would constitute a use of plaintiff's name, voice or likeness in a "commercial tie-up" of the type reserved exclusively to plaintiff by the 1948 Agreement.

(34) The telecasting or broadcasting of any of the eighty-one (81) motion pictures (listed in Exhibits B and D) or any scene or sound track therefrom or any other portion thereof in which the name, voice or likeness of plaintiff appears or is used, or of any still photograph of plaintiff or any recording of plaintiff's voice, on a commercially sponsored basis, or the use of plaintiff's name, voice or likeness in any other advertising medium or media to advertise any service or product whatsoever would cause an association in the minds of the viewing and/or listening public between the plaintiff's name, voice or likeness and the product or service being advertised.

(35) The telecasting or broadcasting of any of the eighty-one (81) motion pictures (listed in Exhibits B and D) or any scene or sound track therefrom or any other portion thereof in which the name, voice or likeness of plaintiff appears or is used, or of any still photograph of plaintiff or any recording of plaintiff's voice, on a sustaining basis, would cause an association in the minds of the viewing and/or listening public between the plaintiff's name, voice or likeness and the station or network presenting the program.

(36) The telecasting or broadcasting of any of the eighty-one [96] (81) motion pictures (listed in Exhibits B and D) or any scene or sound track therefrom or any other portion thereof in which the name, voice or likeness of plaintiff appears or is used, or of any still photograph of plaintiff or any recording of plaintiff's voice, on a commercially sponsored basis, or the use of plaintiff's name, voice or likeness in any other advertising medium or media to advertise any service or product whatsoever, would create in the minds of the viewing and/or listening public the belief that the plaintiff approved, endorsed or recommended the product or service of such sponsor or other advertiser.

(37) The telecasting or broadcasting of any of the eighty-one (81) motion pictures (listed in Exhibits B and D) or any scene or sound track therefrom or any other portion thereof in which the name, voice or likeness of plaintiff appears or is

used, or of any still photograph of plaintiff or any recording of plaintiff's voice, on a sustaining basis would create in the minds of the viewing and/or listening public the belief that the plaintiff approved, endorsed or recommended the station or network presenting the program.

(38) The principal value to a commercial sponsor or station or network in telecasting or broadcasting any of the eighty-one (81) motion pictures (listed in Exhibits B and D) or any scene or sound track therefrom or any other portion thereof in which the name, voice or likeness of plaintiff appears or is used, would be in the name, reputation and sincerity of the plaintiff; and it would be the primary aim, intent, and hope of any such commercial sponsor or station or network to favorably associate the name and reputation of the plaintiff with the sponsor's service or product and to indicate to the public either directly or indirectly that the plaintiff approves, recommends or endorses the said service or product and to trade on the name and good will which the plaintiff has built up over a period of [97] many years and to capture for such sponsor's service or product as great a portion as possible of the good will which attaches to the name, voice and likeness of Roy Rogers.

(39) The defendants do not have any right whatsoever (under either the 1937 Agreement or the 1948 Agreement or otherwise or at all) to use the name, voice or likeness of plaintiff (whether

in still photographs or in motion pictures or otherwise or at all) for commercial advertising purposes; and without in any way limiting the generality of the foregoing, the Court expressly finds that the defendants, and each of them, do not have any right whatsoever (under either the 1937 Agreement or the 1948 Agreement or otherwise or at all) to telecast or broadcast or to authorize others to telecast or broadcast for commercial advertising purposes any of the eighty-one (81) motion pictures (listed in Exhibits B and D) or any scene or sound track therefrom or any other portion thereof in which the name, voice or likeness of plaintiff appears or is used, on either a sustaining or commercially sponsored basis. As to the four (4) motion pictures referred to in Finding No. 10, to wit, "Dark Command," "Lake Placid Serenade," "Brazil" and "Hit Parade of 1947," in each of which the plaintiff appeared incidentally but did not star, the plaintiff in open court waived any right that he otherwise would have had to prevent the showing of said feature length motion pictures for advertising purposes so long as they are shown substantially in their entirety and as feature length motion pictures, but defendants may not use any scene or sound track or any other portion of said four (4) feature length motion pictures in which the name, voice or likeness of plaintiff appears or is used if said scene, sound track, or other portion is used out of context or in any other manner than as an integral part of the said feature length mo-

tion pictures. By reason of said waiver, the use of said four (4) feature length motion pictures or any of them as feature length motion pictures, was excluded from the definition of the phrases "commercial advertising" and "commercial advertising purpose" set forth in Finding [98] No. 13.

(40) The 1948 Agreement and in particular the provisions of subparagraph (C) of paragraph 4 thereof, in recognizing and reserving to the plaintiff the exclusive right to enter into commercial tie-ups and to freely exercise such right, gave rise to an implied negative convenant on the part of defendant Republic Productions, Inc., and anyone claiming through or under it, not to use plaintiff's name, voice or likeness, either in still photographs or in motion pictures or otherwise or at all for commercial advertising purposes.

(41) Incidental advertising where the viewing and listening audience has paid the customary admission fee or charge for the entertainment or for admission to the entertainment and the effect of such incidental advertising on such audience, are substantially and materially different and are not the same as advertising and the effect thereof where no admission fee or charge is made to the viewing and listening audience and the entertainment is brought to the viewing and listening audience by an advertiser, station or network without cost to the viewing or listening audience and the parties hereto did not intend to include such incidental advertising and it was not included within

the terms "advertising, commercial and/or publicity purposes," "commercial advertising" and "commercial tie-ups," or any thereof, as such terms were used in either the 1937 Agreement or the 1948 Agreement, for which reasons such incidental advertising is excluded from the definition of "commercial advertising" and "commercial advertising purpose" set forth in Finding No. 13.

(42) The purported copyrighting of the motion pictures produced by the defendant Republic Productions, Inc., under either the 1937 Agreement or the 1948 Agreement is immaterial to any issue in this action and in any event did not alter the relationship and the rights and obligations between plaintiff and defendants which are the subject matter of this action, and to the extent that said copyrights purport to include any right hereunder found to exist in plaintiff [99] are held in trust by defendants for the benefit of plaintiff.

(43) The defendant Republic Pictures Corporation and defendant Hollywood Television Service, Inc., and each of them, have at all times had full notice and knowledge of plaintiff's exclusive right to and control over the use of his name, voice and likeness for commercial advertising purposes and likewise have at all times had full notice and knowledge of the fact that defendant Republic Productions, Inc., had no right, license, authority or consent to use or authorize others to use plaintiff's name, voice or likeness for commercial advertising purposes.

(44) Upon the termination of the 1948 Agreement on or about May 27, 1951, any and all right, license, authority or consent which any of the defendants may theretofore have had or claimed to have had with respect to the use of plaintiff's name, voice or likeness (whether in still photographs or in motion pictures or otherwise or at all) for commercial advertising purposes wholly ceased and terminated.

(45) At all times until on or about February 1, 1950, the defendants Republic Productions, Inc., and Republic Pictures Corporation represented to the plaintiff that they considered the television and motion picture industries to be competitive and mutually exclusive and that neither a motion picture artist nor a motion picture producer could serve both the motion picture and television industries; and at all times prior to said date said defendants represented to plaintiff that they had no intention or desire to telecast and would not telecast any of the motion pictures produced by Republic Productions, Inc., under either the 1937 Agreement or the 1948 Agreement.

(46) It is not true that the defendant Republic Productions, Inc., in the negotiations leading up to the execution of the 1948 Agreement ever requested, or that the plaintiff ever agreed to grant to said defendant, the unqualified right to telecast [100] either the motion pictures theretofore produced under the 1937 Agreement or the additional motion pictures to be produced under the 1948 Agreement.

On the contrary, the Court expressly finds from said negotiations, from the provisions of the 1948 Agreement, from the conduct of the parties, and from the parties' mutual construction and interpretation of the 1937 Agreement and the 1948 Agreement, that the parties to said 1948 Agreement understood, intended and agreed that plaintiff was to have the sole and exclusive right to and the control over the use of his name, voice and likeness for commercial advertising purposes, and that said exclusive right and control in plaintiff was not intended to be limited, and was not limited to plaintiff's name, voice or likeness outside of motion pictures but was intended by the parties to include plaintiff's name, voice and likeness whether in still photographs or in motion pictures or otherwise or at all.

(47) At no time prior to on or about February 1, 1950, did the defendants, or any of them, ever claim the right to use any of the motion pictures produced by the defendant Republic Productions, Inc., under either the 1937 Agreement or the 1948 Agreement, or any scene or sound track therefrom or any other portion thereof in which the name, voice or likeness of plaintiff appears or is used, for any commercial advertising purpose. The first time any such claim was made by any of the defendants was on or about February 1, 1950, at which time the defendant Republic Productions, Inc., did claim such right, and plaintiff thereupon immediately advised said defendant that it had no right to use

any of said motion pictures or any scene or sound track therefrom or any other portion thereof in which the name, voice or likeness of plaintiff appears or is used, for commercial advertising purposes, and that its rights in said motion pictures were subject and subordinate to plaintiff's exclusive right to use his name, voice and likeness for commercial advertising purposes. Whenever in these Findings, [101] reference is made to the parties' mutual construction or mutual interpretation of the 1937 and 1948 Agreements by their acts and conduct, such reference shall be understood to mean the acts and conduct of the parties beginning in 1937 and extending continuously throughout the terms of the 1937 and 1948 Agreements until on or about February 1, 1950.

(48) At all times from about 1938 until on or about February 1, 1950, defendants Republic Productions, Inc., and Republic Pictures Corporation, and each of them, by their acquiescense, representations and conduct represented to, encouraged, led and permitted the plaintiff to believe, and he did believe, that he had the sole and exclusive right to use and authorize others to use his name, voice and likeness (whether in still photographs or in motion pictures or otherwise or at all) for commercial advertising purposes and to receive and retain all monetary consideration therefrom, and said defendants intended that plaintiff should rely upon such acquiescence, representations and conduct, and plaintiff did so rely, and in reliance thereon has

heretofore over a long period of years developed a large and valuable commercial advertising business based upon the licensing of his name, voice and likeness for commercial advertising purposes and has expended a great amount of time, effort and money in the development of said business and has entered into or authorized others to enter into numerous valuable contracts with third parties whereby for a consideration, but always subject to the control of plaintiff, said third parties were authorized to use plaintiff's name, voice or likeness in or in connection with the advertising of the service or product of such licensed persons. As hereinbefore found, the plaintiff was granted and encouraged by defendants to exploit said commercial advertising rights in lieu of additional salary and also in consideration of the substantial and valuable publicity and advertising which defendants Republic Productions, Inc., and [102] Republic Pictures Corporation received from plaintiff in the course of the exercise by plaintiff of said commercial advertising rights and as a result of plaintiff's other outside activities such as rodeos and other types of personal appearances.

(49) Now to permit the defendants Republic Productions, Inc., and Republic Pictures Corporation, or either of them, or anyone claiming under or through said defendants or either of them, to assert or exercise any right whatsoever to use or authorize others to use plaintiff's name, voice or likeness (whether in still photographs or in motion pictures

or otherwise or at all) for commercial advertising purposes would cause plaintiff immediate, substantial and irreparable damage and would also immediately and substantially damage those licensed by plaintiff, for each of which reasons said defendants Republic Productions, Inc., and Republic Pictures Corporation, and each of them, and any and all persons claiming through or under them or either of them, including but not limited to the defendant Hollywood Television Service, Inc., are and each of them is estopped now to claim or assert or exercise any right, license or authority which they might otherwise have had or claimed to have had to use or authorize others to use the name, voice or likeness of plaintiff (whether in still photographs or in motion pictures or otherwise or at all) for commercial advertising purposes.

(50) The defendants Republic Productions, Inc., and Republic Pictures Corporation and each of them, prior to the commencement of the within action, waived any right, license or authority which they or either of them might otherwise have had or claimed to have had to use or authorize others to use the name, voice or likeness of plaintiff (whether in still photographs or in motion pictures or otherwise or at all) for commercial advertising purposes, first, by their conduct, second, in lieu of additional salary, third, in consideration of the substantial and valuable publicity [103] and advertising which defendants Republic Productions, Inc., and Republic Pictures Corporation received from plaintiff in

the course of the exercise by plaintiff of said commercial advertising rights and as a result of plaintiff's other outside activities such as rodeos and other types of personal appearances, and fourth, by the express provisions of the 1948 Agreement.

(51) At no time during the term of either the 1937 Agreement or during the term of the 1948 Agreement, did the defendant Republic Productions, Inc., request or call upon plaintiff to render any services in any so-called "television productions" or in connection with the broadcasting or transmission of his name, voice or likeness by means of television or broadcasting or in the production, exhibition or transmission of motion pictures by means of television or radio, nor did plaintiff render any such services. On the contrary, such services as were requested by the defendant Republic Productions, Inc., and rendered by plaintiff were solely in connection with the making of motion pictures which were produced for exhibition to the public upon the payment of an admission fee or charge, and such services were neither requested by said defendant Republic Productions, Inc., nor rendered by plaintiff for use for commercial advertising purposes.

(52) Immediate, substantial and irreparable damage and injury will be inflicted upon plaintiff if defendants are permitted to pursue their presently contemplated and threatened course of conduct and telecast or authorize others to telecast any of the eighty-one (81) motion pictures (listed in

Exhibits B and D) or any scene or sound track therefrom or any other portion thereof in which the name, voice or likeness of plaintiff appears or is used, on either a sustaining basis or a commercially sponsored basis, (except only to advertise the defendant Republic Productions, Inc., as a producer of motion pictures and any of the motion pictures produced by said defendant under either the 1937 Agreement or the 1948 Agreement) and the Court expressly finds that any such telecast of [104] any of said motion pictures or any scene or sound track therefrom or any other portion thereof in which the name, voice or likeness of plaintiff appears or is used, will inflict immediate, substantial and irreparable injury upon plaintiff and will immediately, substantially and irreparably damage all elements of plaintiff's commercial advertising business, and will further inflict immediate, substantial and irreparable injury upon plaintiff in that the value of plaintiff's name, voice or likeness for commercial advertising purposes will immediately be destroyed or substantially damaged and diluted, and that plaintiff's name, reputation and good will, and the public's trust, confidence and admiration for plaintiff will be immediately subjected to jeopardy and irreparable damage and injury in that under defendant's contemplated and threatened course of conduct the plaintiff's name, voice and likeness will be associated with, will be used in connection with, and will be used for the purpose of selling, products and services over the

type, quality and character of which plaintiff will have no control.

(53) One of the principal elements of value to anyone using plaintiff's name, voice or likeness in commercial advertising is the existence of control on the part of the plaintiff over the use of his name, voice or likeness by others whereby a user may be granted the exclusive right to use plaintiff's name, voice or likeness in the particular field or fields of such user. If defendants are permitted to pursue their present course of conduct and to telecast or permit others to telecast any of the motion pictures (listed in Exhibits B and D) or any scene or sound track therefrom or any other portion thereof in which the name, voice or likeness of plaintiff appears or is used, for commercial advertising purposes, plaintiff would thereby be deprived of control over the use of his name, voice and likeness in said motion pictures or said scenes or sound tracks therefrom or said portions thereof, for commercial advertising purposes, and would thereby be deprived of his ability to [105] grant exclusivity in any particular field of endeavor to any particular user of his name, voice or likeness for commercial advertising purposes.

(54) It is customary in the radio and television industries for a sponsor to negotiate and contract in advance for programs to be broadcast or telecast over a period of at least thirteen (13) weeks, normally commencing in the Fall of each calendar year. The costs, expenses and commitments which

must be made by a sponsor for both talent and station or network time in connection with commercially sponsored radio or television programs is very substantial and amounts to many thousands of dollars, much of which must normally and necessarily be committed for or expended far in advance of the actual date of broadcasting or telecasting of any given program and such programs by national advertisers may ultimately involve expenditures of several millions of dollars per annum. Pursuant to such custom, from a date prior to September, 1950, until the month of April, 1951, the plaintiff negotiated with his then radio sponsor, The Quaker Oats Company, for a contract or contracts pursuant to which plaintiff would continue to appear on radio for said Company and would also begin appearances on television on behalf of said Company commencing not later than the Fall of 1951. As a result of, among other things, the defendants' threats to telecast or allow others to telecast for commercial advertising purposes certain of the eighty-one (81) motion pictures listed in Exhibits B and D, the said The Quaker Oats Company terminated negotiations for a continuance of the radio program and for the contemplated new television program. Commencing immediately after the discontinuance of said negotiations with The Quaker Oats Company, the plaintiff continuously attempted to negotiate a contract or contracts with various other potential sponsors for his appearance on radio and television programs commencing in the Fall of 1951. As a result of said efforts plain-

tiff did make informal arrangements pursuant to which he commenced a thirteen (13) weeks' [106] radio program on or about October 5, 1951, but plaintiff was unable to arrange for a television program to commence in the Fall of 1951, and was unable to make any arrangements for either radio or television programs which did not contain an option in favor of the sponsor whereby such sponsor could cancel such arrangements in the event that any of the eighty-one (81) motion pictures listed in Exhibits B and D (or any versions thereof modified and shortened so as to be suitable for use on a one hour television program) were telecast on either a sustaining or commercially sponsored basis. The claims and threats of the defendants, of which The Quaker Oats Company had knowledge shortly after they were first made in February, 1950, were in fact a substantial and contributing cause of the termination of the negotiations between plaintiff and The Quaker Oats Company and interfered with and delayed plaintiff in making arrangements with said sponsor or others for radio or television appearances. The said claims and threats of the defendants have substantially interfered with and damaged plaintiff and the plaintiff has actually incurred substantial monetary damages as a proximate result of said claims and threats of defendants, but it is impossible upon the evidence adduced at the trial to ascertain the specific amount of monetary damages suffered by plaintiff.

(55) Defendants' present course of conduct and their claim to the absolute and unrestricted right to use and to authorize others to use for commercial advertising purposes any or all of the eighty-one (81) motion pictures (listed in Exhibits B and D) or any scene or sound track therefrom or any other portion thereof in which the name, voice or likeness of plaintiff appears or is used, and the claim of said defendants to the right to receive and retain substantial monetary consideration for such use now constitute and if permitted to continue will constitute unjust and unfair competition with the plaintiff and now constitute and will constitute a wrongful interference with and a violation of plaintiff's long acknowledged and [107] well established right freely and exclusively to engage in the business of using and of authorizing others to use his name, voice and likeness for commercial advertising purposes.

(56) Any allegations in the Answer of defendants which are in any way contrary to or in conflict with any of the foregoing Findings of Fact are and each of them is hereby found to be untrue.

From the foregoing Findings of Fact, the Court makes the following

Conclusions of Law

(1) The Court concludes in all respects as set forth in the foregoing Findings of Fact, and any Conclusion of Law that is contained therein is hereby expressly incorporated in these Conclusions

of Law with the same force and effect as though expressly set forth herein.

(2) This Court has jurisdiction of the cause pursuant to Section 1332 of Title 28 of the United States Code.

(3) As against the defendants in this action and anyone claiming through or under them, or any of them, the plaintiff is the sole and exclusive owner of his name "Roy Rogers" and his voice and likeness and of the name and likeness of his horse "Trigger" for any and all commercial advertising purposes whatsoever and none of the defendants has any right to use plaintiff's name, voice or likeness or the name or likeness of his horse Trigger (whether in still photographs or in motion pictures or otherwise or at all) for any commercial advertising purpose or purposes whatsoever.

(4) The defendants and each of them are estopped to use or authorize others to use plaintiff's name, voice or likeness or the name or likeness of his horse Trigger (whether in still photographs or in motion pictures or otherwise or at all) for any commercial advertising purpose or purposes whatsoever. [108]

(5) The defendants and each of them have waived any right which they or any of them might ever have had or claimed to have had to use or authorize others to use plaintiff's name, voice or likeness or the name or likeness of his horse Trigger (whether in still photographs or in motion pictures

or otherwise or at all) for any commercial advertising purpose or purposes whatsoever.

(6) Such limited commercial advertising rights as were granted by the plaintiff to the defendant Republic Productions, Inc., expired upon the termination of the 1948 Agreement on or about May 27, 1951, and neither the provisions of the 1937 Agreement nor the provisions of the 1948 Agreement granted to the defendants or any of them any right whatsoever from and after May 27, 1951, to use or authorize others to use plaintiff's name, voice or likeness or the name or likeness of his horse Trigger (whether in still photographs or in motion pictures or otherwise or at all) for any commercial advertising purpose or purposes whatsoever.

(7) The telecasting or broadcasting of any of the eighty-one (81) motion pictures (listed in Exhibits B and D) or any scene or sound track therefrom or any other portion thereof in which the name, voice or likeness of plaintiff or of his horse Trigger appears or is used, on either a sustaining basis or commercially sponsored basis, or any other use of plaintiff's name, voice or likeness or the name or likeness of his horse Trigger (whether in still photographs or in motion pictures or otherwise or at all) in any other advertising medium or media, for any commercial advertising purpose or purposes whatsoever would constitute unfair competition with the plaintiff.

(8) Immediate, substantial and irreparable damage and injury will be inflicted upon the plaintiff if defendants are permitted to telecast or broadcast or authorize others to telecast or broadcast any of the eighty-one (81) motion pictures (listed in Exhibits B and D) or any scene or sound track therefrom or any other [109] portion thereof in which the name, voice or likeness of plaintiff or of his horse Trigger appears or is used, on either a sustaining basis or commercially sponsored basis, or use or authorize others to use plaintiff's name, voice or likeness or the name or likeness of his horse Trigger (whether in still photographs or in motion pictures or otherwise or at all) in any other advertising medium or media, for any commercial advertising purpose or purposes whatsoever.

(9) Plaintiff has actually incurred substantial monetary damages as a proximate result of the claims, threats, acts and conduct of defendants but the amount thereof cannot be ascertained from the evidence adduced at the trial, and plaintiff is therefore not entitled to a judgment for money damages.

(10) Plaintiff has no plain, speedy or adequate remedy at law.

(11) Plaintiff is entitled to a permanent injunction against defendants and each of them, and their respective officers, agents, servants, employees, attorneys and all persons in active concert or participation with them or any of them, enjoining and restraining them, and each of them, from in any manner using, exhibiting, telecasting, broadcasting,

leasing, selling, licensing or disposing of or authorizing any other or others in any manner to use, exhibit, telecast, broadcast, lease, sell, license or dispose of, for any commercial advertising purpose or purposes whatsoever, the name, voice or likeness of the plaintiff Roy Rogers or the name or likeness of plaintiff's horse Trigger (whether in still photographs or in motion pictures or otherwise or at all) in or on any advertising medium or media whatsoever, including but without in any way limiting the generality of the foregoing, any use, exhibition, telecast (on either a sustaining basis or a commercially sponsored basis), broadcast (on either a sustaining basis or a commercially sponsored basis), lease, sale, license or disposition, for any commercial advertising purpose or purposes whatsoever of [110] any of the eighty-one (81) motion pictures (listed in Exhibits B and D) or any scene or sound track therefrom or any other portion thereof in which the name, voice or likeness of plaintiff or of his horse Trigger appears or is used.

(12) Plaintiff is entitled to an order forever releasing and exonerating plaintiff and his surety (National Surety Corporation, a New York Corporation) and each of them, from that certain "Undertaking on Temporary Restraining Order and Preliminary Injunction" filed herein on June 23, 1951, and that certain "Additional Undertaking on Preliminary Injunction" filed herein on July 25, 1951, and from each of said Undertakings.

(13) Plaintiff is entitled to recover his costs herein incurred.

Let Judgment Be Entered Accordingly.

Dated this 26th day of January, 1952.

/s/ PEIRSON M. HALL,

Judge, United States District Court.

Presented and Approved:

GIBSON, DUNN & CRUTCHER,
HENRY F. PRINCE,
FREDERIC H. STURDY,
SAMUEL O. PRUITT, JR.,
RICHARD H. WOLFORD,
By /s/ FREDERIC H. STURDY,
Attorneys for Plaintiff.

Receipt of copy of the foregoing is hereby acknowledged, January 23, 1952:

FRANK B. BELCHER,
LOEB & LOEB,
HERMAN F. SELVIN,
HARRY L. GERSHON,

By /s/ HARRY L. GERSHON,

Attorneys for Defendants, Republic Productions, Inc., Republic Pictures Corporation, and Hollywood Television Service, Inc. [111]

EXHIBIT A

[Exhibit A attached is identical to Exhibit A attached to the Answer of Defendant and is set out in full at pages 25 to 46 of this printed record.]

FHS:tlb 12-11-51

EXHIBIT B

Titles and Dates of Completion of Photography of Motion Pictures Starring Roy Rogers, Produced During Term of 1937 Agreement

Title	Date of Completion
Under Western Stars	March 29, 1938
Billy the Kid Returns	August 8, 1938
Come on Ranger	October 20, 1938
Shine On Harvest Moon	November 16, 1938
Rough Riders Patrol	January 28, 1939
Frontier Pony Express	March 3, 1939
Southward Ho	April 12, 1939
In Old Caliente	May 13, 1939
Wall Street Cowboy	August 1, 1939
The Arizona Kid	August 25, 1939
Saga of Death Valley	October 13, 1939
Days of Jesse James	November 16, 1939
Young Buffalo Bill	March 9, 1940
Carson City Kid	May 16, 1940
Ranger and the Lady	June 14, 1940
Colorado	July 27, 1940
Bad Men of Deadwood	July 31, 1940
Young Bill Hickok	August 27, 1940
The Border Legion	October 17, 1940

Robin Hood of the Pecos .....November 25, 1940
In Old Cheyenne .....February 25, 1941
Sheriff of Tombstone .....April 5, 1941
Nevada City .....May 6, 1941
Jesse James at Bay .....September 9, 1941
Red River Valley .....November 5, 1941
Man From Cheyenne .....December 4, 1941
South of Sante Fe .....January 3, 1942
Sunset on the Desert .....February 21, 1942
Romance on the Range .....April 18, 1942
Sons of the Pioneers .....May 27, 1942
Sunset Serenade .....July 25, 1942
Heart of the Golden West .....September 19, 1942
Ridin' Down the Canyon .....October 4, 1942
Idaho .....December 31, 1942
King of the Cowboys .....February 4, 1943
Song of Texas .....April 12, 1943
Silver Spurs .....May 15, 1943
Man from Music Mountain .....July 6, 1943
Hands Across the Border .....September 21, 1943
Cowboy and the Senorita .....January 26, 1944
Yellow Rose of Texas .....March 10, 1944
Song of Nevada .....April 2, 1944
San Fernando Valley .....June 22, 1944
Lights of Old Sante Fe .....July 31, 1944
Utah .....December 22, 1944
Bells of Rosarita .....February 9, 1945
Man from Oklahoma .....March 29, 1945
Sunset in El Dorado .....June 28, 1945
Don't Fence Me In .....August 6, 1945
Along the Navajo Trail .....September 6, 1945
Song of Arizona .....December 22, 1945

Rainbow Over Texas .....January 29, 1946
My Pal Trigger .....March 16, 1946
Under Nevada Skies .....April 17, 1946
Roll On Texas Moon .....May 17, 1946
Home in Oklahoma .....July 3, 1946
Helldorado .....July 25, 1946
Apache Rose .....September 27, 1946
Bells of San Angelo .....January 20, 1947
Springtime in the Sierras .....March 19, 1947
On the Old Spanish Trail .....June 11, 1947
Gay Ranchero .....August 20, 1947
Under California Stars .....December 15, 1947

EXHIBIT C

[Exhibit C attached is identical to Exhibit D attached to the Answer of Defendant and is set out in full at pages 55 to 109 of this printed record.]

FHS:tlb 12-11-51

EXHIBIT D

Titles and Dates of Completion of Photography of Motion Pictures Starring Roy Rogers, Produced During Term of 1948 Agreement

Title	Date of Completion
Eyes of Texas	April 17, 1948
Nighttime in Nevada	May 15, 1948
Grand Canyon Trail	July 2, 1948
The Far Frontier	August 16, 1948
Susanna Pass	February 4, 1949
Down Dakota Way	April 4, 1949

The Golden Stallion .....May 24, 1949
Bells of Coronado .....August 19, 1949
Twilight in the Sierras .....October 18, 1949
Sunset in the West .....April 5, 1950
North of the Great Divide .....May 20, 1950
Trail of Robin Hood .....July 12, 1950
Spoilers of the Plains .....August 29, 1950
Heart of the Rockies .....October 25, 1950
Trigger, Jr. .....December 19, 1950
In Old Amarillo .....January 24, 1951
South of Caliente .....March 22, 1951
Pals of the Golden West .....May 23, 1951

Receipt of copy acknowledged.

[Endorsed]: January 26, 1952. [164]

United States District Court, Southern District of California, Central Division

No. 13220-PH

ROY ROGERS,

Plaintiff,

vs.

REPUBLIC PRODUCTIONS, INC., et al.,

Defendants.

JUDGMENT FOR PLAINTIFF
(Permanent Injunction)

The above-entitled cause having duly come on for trial on Thursday the 13th day of September, 1951, at the hour of 10:00 o'clock a.m. before the Honor-

able Peirson M. Hall, Judge Presiding, Frederic H. Sturdy, Esq., Samuel O. Pruitt, Jr., Esq., and Richard H. Wolford, Esq., of Gibson, Dunn & Crutcher, appearing as counsel for plaintiff, and Herman F. Selvin, Esq., and Harry L. Gershon, Esq., of Loeb and Loeb, and Frank B. Belcher, Esq., of Jennings & Belcher, appearing as counsel for defendants, and the trial having been concluded on Friday, October 12, 1951, and oral argument by counsel for the respective parties having been concluded on Wednesday, October 17, 1951, and the cause having been submitted to the Court on the latter date, and the Court having heard and considered the evidence both oral and documentary offered by the respective parties, and the Court, in open court, having orally announced its decision in [165] favor of the plaintiff on October 18, 1951, and being fully advised in the premises, the Court having made and filed herein its Findings of Fact and Conclusions of Law, and having directed that judgment in favor of the plaintiff be entered in accordance therewith,

Now Therefore, by reason of the premises and Findings aforesaid and of the law,

It Is Hereby Ordered, Adjudged and Decreed:

1. That the defendant Republic Productions, Inc., the defendant Republic Pictures Corporation, and the defendant Hollywood Television Service, Inc., and each of them, and their respective officers, agents, servants, employees, attorneys and all persons in active concert or participation with them or any of them be and they are hereby permanently

enjoined and restrained from in any manner using, exhibiting, telecasting, broadcasting, leasing, selling, licensing or disposing of or authorizing any other or others in any manner to use, exhibit, telecast, broadcast, lease, sell, license, or dispose of, for any commercial advertising purpose or purposes whatsoever (as said term "commercial advertising purpose" is defined in the Findings of Fact herein) the name, voice or likeness of the plaintiff Roy Rogers or the name or likeness of plaintiff's horse Trigger (whether in still photographs or in motion pictures or otherwise or at all) in or on any advertising medium or media whatsoever, including but without in any way limiting the generality of the foregoing, any use, exhibition, telecast (on either a sustaining basis or a commercially sponsored basis), broadcast (on either a sustaining basis or a commercially sponsored basis), lease, sale, license or disposition, for any commercial advertising purpose or purposes whatsoever (as said term "commercial advertising purpose" is defined in the Findings of Fact herein) of any of the following eighty-one (81) motion pictures heretofore produced by defendant [166] Republic Productions, Inc., or any scene or sound track therefrom or any other portion thereof in which the name, voice or likeness of plaintiff or the name or likeness of plaintiff's horse Trigger appears or is used:

Title	Date of Completion
(1) Under Western Stars	March 29, 1938
(2) Billy The Kid Returns	August 8, 1938

(3) Come on Ranger .....October 20, 1938
(4) Shine on Harvest Moon ..November 16, 1938
(5) Rough Riders Patrol .....January 28, 1939
(6) Frontier Pony Express .....March 3, 1939
(7) Southward Ho .....April 12, 1939
(8) In Old Caliente .....May 13, 1939
(9) Wall Street Cowboy .....August 1, 1939
(10) The Arizona Kid .....August 25, 1939
(11) Saga of Death Valley .....October 13, 1939
(12) Days of Jesse James .....November 16, 1939
(13) Young Buffalo Bill .....March 9, 1940
(14) Carson City Kid .....May 16, 1940
(15) Ranger and the Lady .....June 14, 1940
(16) Colorado .....July 27, 1940
(17) Bad Men of Deadwood .....July 31, 1940
(18) Young Bill Hickok .....August 27, 1940
(19) The Border Legion .....October 17, 1940
(20) Robin Hood of the Pecos .November 25, 1940
(21) In Old Cheyenne .....February 25, 1941
(22) Sheriff of Tombstone .....April 5, 1941
(23) Nevada City .....May 6, 1941
(24) Jesse James at Bay .....September 9, 1941
(25) Red River Valley .....November 5, 1941
(26) Man From Cheyenne .....December 4, 1941
(27) South of Santa Fe .....January 3, 1942
(28) Sunset on the Desert .....February 21, 1942
(29) Romance on the Range .....April 18, 1942
(30) Sons of the Pioneers .....May 27, 1942
(31) Sunset Serenade .....July 25, 1942
(32) Heart of the Golden West ....Sept. 19, 1942
(33) Ridin' Down the Canyon ...October 4, 1942
(34) Idaho .....December 31, 1942

(35) King of the Cowboys .....February 4, 1943
(36) Song of Texas .....April 12, 1943
(37) Silver Spurs .....May 15, 1943
(38) Man from Music Mountain ....July 6, 1943
(39) Hands Across the Border ....Sept. 21, 1943
(40) Cowboy and the Senorita ...January 26, 1944
(41) Yellow Rose of Texas .....March 10, 1944
(42) Song of Nevada .....April 2, 1944
(43) San Fernando Valley .....June 22, 1944
(44) Lights of Old Sante Fe .....July 31, 1944
(45) Utah .....December 22, 1944
(46) Bells of Rosarita .....February 9, 1945
(47) Man From Oklahoma .....March 29, 1945
(48) Sunset in El Dorado .....June 28, 1945
(49) Don't Fence Me In .....August 6, 1945
(50) Along the Navajo Trail ..September 6, 1945
(51) Song of Arizona .....December 22, 1945
(52) Rainbow Over Texas .....January 29, 1946
(53) My Pal Trigger .....March 16, 1946
(54) Under Nevada Skies .....April 17, 1946
(55) Roll On Texas Moon .....May 17, 1946
(56) Home in Oklahoma .....July 3, 1946
(57) Helldorado .....July 25, 1946
(58) Apache Rose .....September 27, 1946
(59) Bells of San Angelo .....January 20, 1947
(60) Springtime in the Sierras ....March 19, 1947
(61) On the Old Spanish Trail .....June 11, 1947
(62) Gay Ranchero .....August 20, 1947
(63) Under California Stars ..December 15, 1947
(64) Eyes of Texas .....April 17, 1948
(65) Nighttime in Nevada .....May 15, 1948
(66) Grand Canyon Trail .....July 2, 1948

(67) The Far Frontier .....August 16, 1948
(68) Susanna Pass .....February 4, 1949
(69) Down Dakota Way .....April 4, 1949
(70) The Golden Stallion .....May 24, 1949
(71) Bells of Coronado .....August 19, 1949
(72) Twilight in the Sierras .....October 18, 1949
(73) Sunset in the West .....April 4, 1950
(74) North of the Great Divide .....May 20, 1950
(75) Trail of Robin Hood .....July 12, 1950
(76) Spoilers of the Plains .....August 29, 1950
(77) Heart of the Rockies .....October 25, 1950
(78) Trigger, Jr. .....December 19, 1950
(79) In Old Amarillo .....January 24, 1951
(80) South of Caliente .....March 22, 1951
(81) Pals of the Golden West .....May 23, 1951

2. That the plaintiff and his surety (National Surety Corporation, a New York Corporation) and each of them, be and they, and each of them, are hereby forever released and exonerated from that certain "Undertaking on Temporary Restraining Order and Preliminary Injunction," filed herein on June 23, 1951, and that certain "Additional Undertaking on Preliminary Injunction" filed herein on July 25, 1951, and from each of said Undertakings.

3. That the plaintiff have and recover from the defendants Republic Productions, Inc., Republic Pictures Corporation, and Hollywood Television

Service, Inc., and each of them, their costs, taxed herein in the sum of $1,927.16. [169]

Dated this 26th day of January, 1952, 10:45 a.m.

/s/ PEIRSON M. HALL,
Judge, United States District Court.

Presented and Approved:

GIBSON, DUNN &
CRUTCHER,
HENRY F. PRINCE,
FREDERIC H. STURDY,
SAMUEL O. PRUITT, JR.,
RICHARD H. WOLFORD,
By /s/ FREDERIC H. STURDY,
Attorneys for Plaintiff.

Receipt of a copy of the foregoing is hereby acknowledged, January 23, 1952.

FRANK B. BELCHER,
LOEB AND LOEB,
HERMAN F. SELVIN,
HARRY L. GERSHON,
By /s/ HARRY L. GERSHON,

Attorneys for Defendants, Republic Productions, Inc., Republic Pictures Corporation, Hollywood Television Service, Inc.

Receipt of copy acknowledged.

[Endorsed]: Filed January 26, 1952.

Docketed and entered January 26, 1952. [170]

[Title of District Court and Cause.]

NOTICE OF APPEAL

To Plaintiff Above-Named and to His Attorneys of Record:

You and each of you will please take notice that defendants Republic Pictures Corporation, Republic Productions, Inc., and Hollywood Television Service, Inc., hereby appeal to the United States Court of Appeals for the Ninth Circuit from the judgment for plaintiff heretofore docketed and entered on January 26, 1952, and each parts thereof, except that defendants do not appeal from said judgment to the extent that same does not award plaintiff a judgment for monetary damages.

Dated February 25, 1952.

FRANK B. BELCHER, and
LOEB AND LOEB,
By /s/ HARRY L. GERSHON,
Attorneys for Defendants and Appellants.

Affidavit of Service by Mail attached.

[Endorsed]: Filed February 25, 1952. [171]

In the United States District Court, Southern District of California, Central Division

No. 13220-PH Civil

ROY ROGERS,

Plaintiff,

vs.

REPUBLIC PRODUCTIONS, INC., a New York Corporation; HOLLYWOOD TELEVISION SERVICE, INC., a Delaware Corporation, et al.,

Defendants.

Honorable Peirson M. Hall, Judge Presiding.

REPORTER'S TRANSCRIPT
OF PROCEEDINGS
September 13, 1951

Appearances:

For the Plaintiff:

GIBSON, DUNN & CRUTCHER,
634 South Spring Street,
Los Angeles 14, California; by

FREDERIC H. STURDY, ESQ., and
RICHARD H. WOLFORD, ESQ., and
SAMUEL O. PRUITT, JR., ESQ.

For the Defendants:

LOEB and LOEB,
523 West Sixth Street,
Los Angeles 14, California; by

HERMAN F. SELVIN, ESQ., and
HARRY L. GERSHON, ESQ., and
FRANK B. BELCHER, ESQ.,
818 Security Building,
Los Angeles 13, California.

* * *

Proceed. I did not have a chance to read your pretrial memorandums as thoroughly as I would have liked to have done, but I have glanced through them and have a general notion of what the lawsuit is about.

Mr. Sturdy: I was going to say, your Honor, that this matter was argued rather extensively at the time of the hearing on the preliminary injunction, and I had been assuming that the court knew in general what the lawsuit was about.

However, I would like to very briefly outline some of what we believe to be the main facts.

The Court: In the reexamination of the pleadings yesterday, your position is, first, that there is a violation of the contracts on the part of the defendant?

Mr. Sturdy: Well, I think you could put it that way or, [6*] putting it the other way, I would say that the contracts do not give them the right, if that is a violation of the contract, because it doesn't

* Page numbering appearing at top of page of original Reporter's Transcript.

give them the right they claim under, so I suppose technically it is a violation.

The Court: Then I was wondering whether or not you were attempting to state a separate cause of action for unfair competition by your allegations in Paragraph 18.

Mr. Sturdy: Yes, I was, your Honor, and I was going to mention that.

The Court: Why did you not set it up as a separate cause of action then?

Mr. Sturdy: Well, frankly, your Honor, in the Federal practice I personally, in order to simplify the pleadings, have normally set up a single claim. I have always understood that unless somebody objected to that, that that was an appropriate pleading because so often the same facts that give rise to one cause of action will give rise to another one. And we all know in the state courts we re-plead nine-tenths of the first cause of action and generally add one or two paragraphs.

The Court: You also have a third one here, waiver, if there is any right; and the fourth one is estoppel.

Mr. Sturdy: That is correct, your Honor.

I think again, as practicing attorneys, we realize that very often the same facts that would indicate a waiver will [7] give rise to an estoppel. It is merely a different legal conclusion, because we do rely on conduct to a great extent in this waiver and estoppel theory. [8]

The Court: Well, I just wanted to see whether

or not you were attempting to state one cause of action or four.

Of course, I am a little old-fashioned; I don't believe in Professor Clark's theory that it simplifies pleadings to throw everything in one basket and compel the Judge and everybody else to try to figure out why you think you are entitled to relief.

Mr. Sturdy: I am sorry, your Honor.

The Court: Nobody has made any exception to it, and I wanted you to clarify your position with respect to it.

Mr. Sturdy: Yes. I felt there was a single claim for relief based on these four different theories.

In all of these claims, your Honor, the basic basis of all of them is what we believe to be the fundamental right of anyone in his name and likeness—if you were a private citizen we call it a right of privacy, and courts prevent people from using it, and when a person is a public figure they say it is a property right because public figures are able to license or sell their name for commercial purposes, and then the courts protect it as a property right. But that is the fundamental decision here, as to whether we granted the right to the defendants to use this public figure's name and likeness in the manner in which they desire to use it, or did we not so grant it.

Briefly, your Honor, the evidence will go back to 1937, [9] when there was an original contract signed October 13, 1937. I believe the Court has seen that before; it is in the pleadings.

The Court: Yes.

Mr. Sturdy: There is no question about it, but we will put an additional copy in for the convenience of the Court so you don't have to thumb through the pleadings. That contract with amendments ran until—there were disputes in the middle of it, but at least it ran until the second contract, February 28, 1948, and we will put that contract in evidence. There is no question about the validity of that. Actually there are the rights, I believe—to be fair to all parties, all parties would agree that the rights of the parties under each of those contracts are separate. In other words, it is possible that under one contract you would find that they could do this, whereas with respect to the pictures made under the other you would find that they couldn't do so. With the single possibility that this course of conduct and the waiver and estoppel theory, I think, would cover both.

The Court: Your position as to the first contract was that on the face of the contract it granted the defendants here the right to use his name and likeness for commercial purposes during the term of the contract only?

Mr. Sturdy: That is correct, your Honor, and therefore [10] that the term having expired, under almost an axiom, that the right terminated.

It is as though you make a lease of your property from now to January 1st; it stops January 1st, and after that you don't have a lease.

We make the same claim, your Honor, under the second contract, although the second contract, it is

true, has a few more frills in it, because there the parties had had some experience with this advertising business and they carved out certain rights which they thought the parties should have, and the right which we thought that Republic should have is contained in 4-B. There are four or five subparagraphs of paragraph 4.

The Court: Your position as to that contract is, likewise, that any right to use it commercially expired——

Mr. Sturdy: That is correct.

The Court: ——at the end of the contract, if I understand the contentions of your brief correctly.

Mr. Sturdy: That is correct.

The Court: Then the lawsuit does not involve a right of the defendants to use these pictures on television, except under commercial sponsorship?

Mr. Sturdy: Yes, your Honor, unless, as I say, I feel that a sustaining program, I feel even a so-called sustaining program, and that is just a term, is in effect a commercial [11] project, because it advertises the station, and the purpose of a sustaining program is to gather people, gather the listening public——

The Court: By a sustaining program, you mean a program paid for by the television station?

Mr. Sturdy: Yes, your Honor.

The Court: There is not involved in this lawsuit the right of Republic to put these pictures on television and advertise Republic?

Mr. Sturdy: That is correct, and Rogers pictures.

I can visualize, your Honor, and I have wondered why the motion picture industry didn't do it, instead of crying about television they should have television for an advertising media to get people to go to the theatres. I think they could do a beautiful job of it.

The Court: That isn't up to me to decide.

Mr. Sturdy: I know. But the Court has hit upon a right which I think they not only have, but it is a valuable right; that is the point I was making. It is not just a theoretical right.

The Court: In other words, you concede they have that right?

Mr. Sturdy: I would concede that they could put these pictures on for a "See Roy Rogers pictures week," or "Go to the theatre once a week and see Republic stars." [12]

Technically the contract says only Rogers pictures.

I feel that would be within the spirit of the contract. And I feel that they could also T. V. these into theatres.

For example, the Court may have read the Times this morning. There is a headline on it that there was a riot, there were so many people trying to get into theatres to see the prize fight last night.

There is no reason why they shouldn't use the medium of televising to televise these into theatres to get away from the mechanical problems of chasing the reels around to various theatres and having operators to operate them.

The Court: Your point is, you concede the defendants have that right?

Mr. Sturdy: That is correct, your Honor.

The Court: So long as they do not commercially sponsor or have somebody commercially sponsor it?

Mr. Sturdy: That is basically our contention. It really hasn't anything to do with television. The thing we are objecting to is what we believe to be a use of his name for advertising purposes. And we don't feel they could do it on radio or billboards or newspapers or television or anywhere else. Those are all advertising media. [13]

* * *

The Court: Do you wish to make a statement at this time, Mr. Selvin?

Mr. Selvin: I would like to make a brief one, your Honor.

Our fundamental position is that under this contract, or in the absence of any provisions in the contract, Republic became and is the owner of all of these pictures, with all of the rights incident to absolute and unlimited ownership. That being such, it is incumbent upon the plaintiff to point to some provision of the contracts, express or implied, which in some way cuts down or limits that ownership.

We say with respect to the provisions on which they rely, the so-called commercial tie-up provisions in the contract, Paragraph 4 of the 1948 contract, we say that with respect to those provisions they a subject entirely separate and distinct from the subject dealt with in what we have called in our memorandums the all-rights or exhibition clause.

One deals with Rogers' appearance as an integral part of a motion picture, which is a definite, tan-

gible thing, and as to which apparently our unincumbered title is conceded. The other, commercial advertising clause, deals with the right of the parties to make use of Roy Rogers' name and likeness outside of the picture for various commercial purposes.

Now we concede that as to those uses, those outside uses, uses not connected with the exhibition of the picture, [17] our rights, whatever they were, terminated with the termination of the contract except in one particular, the contract gives us the perpetual right to use Roy Rogers' name and likeness for the purpose of advertising the pictures which we own.

So we say that on a construction of the contract there is to be found no curtailment, no cutting down of our unlimited and absolute ownership. If there can be any doubt of that, if the contract needs interpretation or construction, or in order to negate the implication of the covenant which Mr. Sturdy seeks to imply, although he hasn't mentioned it in his opening statement, if in order to negate that it becomes necessary, we are prepared to produce and will offer evidence relating to the negotiation of these contracts, the statements and discussions of the parties, to the end of showing that it was made clear and acquiesced in by Rogers that under these contracts Republic wanted and was to get unqualified television rights. I think that is the term that was actually used in the discussions, as the evidence will show.

Our evidence will further show——

The Court: That evidence will be along the lines of the affidavits which you filed before, on commercial advertising?

Mr. Selvin: Affidavits relating to the meaning of the commercial tie-up. There will be evidence of that, and of the place and significance of the term commercial advertising in the industry. [18]

But beyond that, we will offer evidence of the actual negotiations of the parties, by the people who participated in those negotiations, backed up by the various memorandums and notes which they made and took at the time of the discussions. And from that evidence we propose to show to your Honor that there could be no doubt that not only was it not the intention of the parties in any way to limit Republic's rights to use these pictures on television, but that it was affirmatively maintained by Republic's representatives and acquiesced in by Rogers' representatives that they should have the right to televise these pictures if they so desired.

Our evidence will further show that after that contract was executed and the parties, that is, the 1948 contract, because it was from about 1947 on that television saw its big expansion, although it was in existence and a potential thing, at any rate, as early as the first contract, since the first contract expressly refers to it in language; our evidence will also show that as the parties performed under these contracts Mr. Rogers and his representatives who were by those contracts prohibited from appearing on television in person or making

motion pictures for television by any other producer, recognized that the term "television" as used in the contract included commercial or sponsored programs as well as all other kinds, because whenever they wanted Roy Rogers to appear on a commercial television program they requested Republic's [19] permission and if that permission was not obtained they did not appear, except in one instance, which was explained as an oversight or a mistake or an impulsive act on the part of Roy Rogers, and as to which, as a matter of fact, Republic consented before the appearance because there had been a newspaper announcement of it.

So we will show by the construction of the contract these parties made no distinction between sponsored and non-sponsored commercial or non-commercial television as those terms were used in the contracts. [20]

* * *

Mr. Selvin: * * * But our point is that on the interpretation of the contract, what the big question in this case is going to be, is what did the parties mean when in the contract they defined the photoplays to which Republic was given, if it didn't have, complete and unincumbered title—what did they mean in defining the photoplays when they said that a photoplay includes any motion picture produced or designed—this is not [21] the exact language, but the substance of it—for transmission or exhibition by any method now or hereafter known, including among others television devices.

Now what did they mean by that? We say that they meant by the use of the word "television" in

that provision of the contract exactly what they meant in the provision of the contract which says that during the term of the contract Roy Rogers shall not appear in television, and since Roy Rogers by his conduct demonstrated that he considered that prohibition against television appearance to include commercial as well as non-commercial television, then we say when the same word was used in the definition of photoplay and the granting of rights to Republic, it also included commercial as well as non-commercial television, and that therefore our rights under the contract to exhibit these pictures by commercial as well as non-commercial television is exclusively established. [22]

* * *

Mr. Selvin: To sum it up in a sentence, if I may: What Mr. Rogers is trying to do here is to apply to property which we admittedly own unconditionally and absolutely, restrictions in the contract which relate to a different species of property which he owns, namely, the right to use his name and likeness outside of these pictures.

Now, once we see that basic distinction between these two clauses, I think it follows necessarily and logically that the one, that is, the commercial tie-up clause, is no limitation whatever on the exhibition or ownership clause. [26] And if, as I said before, if there is the slightest doubt about that, the evidence which we are prepared to offer, and which we will offer, as to the negotiations and discussions of the parties in entering into this contract, at least in the '48 contract, will prove conclusively

that it never contemplated any limitation of the sort now urged upon Republic's ownership rights.

I have already referred to some of the evidence of practical construction which we propose to offer. We will offer some additional evidence. We will show that on several occasions after the 1948 contract was executed the possibility that Republic would put these pictures on television was brought home to Rogers and his representatives, and that it was not until the very late stages of his contract, after negotiations for a new deal had failed, or had looked as though they were going to fail, that it was ever suggested by Rogers or any of his representatives that there was any limitation whatever on Republic's right to put these pictures on television of any kind.

We will show and we will contend from the evidence that the necessary inference is that the parties never intended at the time they entered into these contracts to put any limitation on, and that the contention now made that there is a limitation is an afterthought induced by the necessities of the negotiations that were going on for a new deal, and for [27] permission to Roy Rogers to appear on a television program, a continuous television program; and when those negotiations failed, or it looked as though they were going to fail, then and then for the first time it occurred to Rogers and his representatives that in this contract there was some limitation on our right to televise these [28] pictures.

* * *

Mr. Selvin: I have one more brief statement

and then I am through. I say the significance of this evidence, not only of the discussions in negotiations, but of the conduct and practice of the parties after the contract had been executed, is this: You will have to read into this contract, in order to sustain the plaintiff's position, we submit, you will have to read into it a covenant that is not there in express words, you will have to imply a covenant a prohibition against our use of these pictures or commercial television into that agreement.

Now, a covenant cannot be implied against the expressed intention of the parties, and if the parties at the time they executed this contract had no intention to prohibit, and we think the evidence that they didn't think they had any such right or didn't urge any such right until late in the term of the contract will justify and compel that inference, if they had no such intention then no implication of the sort Mr. Sturdy demands, and which his case requires, can be made. And that, we say, is the significance of the evidence.

I haven't attempted to go into all the details of the evidence, or the various ramifications which it probably will [31] take, but I have tried to indicate in a general way our basic position, and I say to your Honor—I must say one more word with reference to waiver and estoppel. We think that that is a completely irrelevant issue in this case. The only effect, assuming that Mr. Sturdy proves up to the hilt on his allegations in his complaint with respect to waiver and estoppel, the only effect that evidence would have would be to show that

Republic does not now have the right, that it is estopped to complain about Roy Rogers' commercial tie-up activities under the '37 contract, which in language gave him no commercial tie-up rights without our consent. So if this were a lawsuit where we were claiming a breach of contract on his part because he made commercial tie-ups without our consent, or if we were claiming some interest in the proceeds of those commercial tie-ups, waiver and estoppel might have some relevancy.

But since we are not concerned with that—we don't deny for a moment whatever Rogers did in respect of commercial tie-ups was his, we make no claim to it, we make no claim to breach of contract, we don't want the proceeds——

The Court: And that it was consented to?

Mr. Selvin: And it was undoubtedly acquiesced in, let me put it that way. In a great many instances there was express consent. [32]

The Court: That was under the '37 contract?

Mr. Selvin: Under the '37 contract, yes.

The Court: Although the face of the contract gave that right to Republic?

Mr. Selvin: We have the right to control the commercial tie-ups, yes.

We say all that amounts to is that if we were not now taking the position which we are taking with respect to that situation, Mr. Sturdy could then, and perhaps with justice, say that we are estopped from claiming any violation or breach on Mr. Rogers' part in that respect.

But that is not an issue here. So waiver and estoppel is beside the point.

So is unfair competition, your Honor, because the whole basis of the claim of unfair competition in this case, as Mr. Sturdy's memorandums will show at length, is the assumption—and I might add the question-begging assumption—that Roy Rogers has never consented to the use of his name and likeness in motion pictures to be televised on commercial programs. That is the whole question, did the rights that we got in these pictures include or did it not include commercial television?

If the answer, as we contend, is that it did include commercial television, then there is Mr. Rogers' consent, because he appeared in the pictures, he signed a contract [33] agreeing to appear, he said in that contract that we had all rights in and to the fruits of his services and to his poses and acts and appearances, and the rights to reproduce them, exhibit them, and transmit them by any devices then or thereafter known, including television devices. So the question of unfair competition drops out of the case.

If your Honor determines that the right which we have in these pictures does not include the right to use them on commercial television, Mr. Sturdy doesn't have to rely on unfair competition.

On the other hand, if your Honor determines that the right in these pictures does include the right to show them on commercial television, then unfair competition is immaterial, because we then have Mr. Rogers' contractual consent to the use of his name and likeness in that fashion.

The Court: Very well. Call your witness.

Mr. Sturdy: I was going to make one remark, if I could, your Honor, very briefly, and that is that we do not agree at all as to these statements made as to the prior negotiations.

Also, we had understood that this 36-page contract that was arrived at after some six months of negotiation was an integrated instrument.

The Court: Was?

Mr. Sturdy: Yes, was and is. But I didn't want to remain [34] silent and agree with the statements which Mr. Selvin made as to what the evidence would be if it became material. We don't believe it is material.

The Court: He said he was going to produce that kind of evidence. You can produce your kind of evidence, whatever it is. [35]

* * *

ROY ROGERS

called as a witness by and in his own behalf, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name in full, please.

The Witness: Roy Rogers.

The Clerk: And your address?

The Witness: 5330 Amastoy Avenue, Encino, California.

(Conference between the court and the clerk.)

The Court: The Clerk just called my attention to the fact that there were Exhibits 1 to 16 offered for identification on the other hearing. They may

(Testimony of Roy Rogers.)

be marked for identification in this hearing with the same numbers.

Mr. Sturdy: Very well. Thank you, your Honor.

It may be that we will either want to offer those or additional ones, but I will try not to encumber the record.

The Court: They will take the same marking for identification purposes at this time.

(The exhibits referred to were marked for identification Plaintiff's Exhibits 1 to 16, inclusive.)

Direct Examination

By Mr. Sturdy:

Q. Mr. Rogers, will you tell us a little bit about your early training or experience in the entertainment field, [36] please?

A. Well, I was born in Ohio, and raised on a farm out of Portsmouth until I was 17, which during that time, since I was about eight or nine years old, my father and mother played the mandolin-guitar and that is where I first learned, and we had square dances on Saturday nights at different neighbors' houses, sometimes at our house, and I learned to call square dances and play the mandolin-guitar at that time.

I got through two years of high school and had to quit to go to work, and I went to Cincinnati, got me a job in a shoe factory, and went to night school there for a year, and I came to California.

(Testimony of Roy Rogers.)

Q. What was that date that you left night school and went to California? A. In 1930.

Q. That was the beginning of the depression, in other words?

A. Yes. I came here in June, 1930, and stayed for four months to visit my sister, and went back to Ohio, and I hitchhiked back out in about a month, and I have been here ever since.

My first job in California was driving a sand and gravel truck, and I went up north and picked peaches for one season, and during that time I tried to get on some of [37] the radio stations where they had different shows, and I went on as a guest and sang and played songs.

In 1931 they had a radio station in Inglewood. They had a program on Saturday night that anybody could get on, so I sang two or three songs and played some on the mandolin-guitar, and a fellow called me up in a couple of weeks—they took my name and address—and asked me if I would join his group, which was the Rocky Mountaineers.

So I joined them, and they had no singers in the group, just mostly instrument players, and then we got Bob Knowland and later on Tim Spencer which formed the trio that you will hear about later.

That group, we played for clubs, Lions Clubs and different kinds of entertainment, and we were on radio station KGER.

After we couldn't make a go of it, we split up and the three of us went with a group called the International Cowboys, which was a group of about

(Testimony of Roy Rogers.)

10 or 11 fellows who were also on the same station only on the downtown remote control station.

We were there for the latter part of '32 and the first part of '33, and there was a fellow selling time on the station who asked us, told us if we would go on the road for him he thought he could make us a pretty good amount of money. So we told him to go ahead, and he started ahead of us and [38] wired us our first date, which was in Yuma, Arizona.

Q. Does that mean personal appearances?

A. Yes, personal appearances.

Our first date was Yuma, Arizona.

The Court: When?

The Witness: This was in '33, 1933, June.

And he stayed ahead of us and we got five out of this group of 10, Tim Spencer, a fellow called "Cyclone," and "Cactus Mac," and "Slumber Nichols," and we played our first date in Yuma, which he had booked at 50 per cent over the average, and we made no money.

We played Miami, Arizona, and the same thing happened. And we did our advertising by writing on the outside of the car, and with a microphone and rode up and down the main streets.

Then we made about $4.00 apiece in Safford, Arizona, and went on to Wilcox, which was the home town of "Cactus Mac." He left us there, said he couldn't take any more of it, and said he was going to stay there at his dad's ranch, and the four of us went on to Roswell, New Mexico, and we got

(Testimony of Roy Rogers.)

on the radio station there and played the theatre and went up to the White Mountains for a celebration, Fourth of July celebration, and played up there, and we played a dance in Roswell and made enough money to get on to Lubbock, Texas.

We got on the radio station there and talked about [39] different appearances we made around in surrounding towns of Lubbock, and we made enough money to get back home, and when I got back I joined a group called the Texas Outlaws on radio station KFWB.

Q. (By Mr. Sturdy): By "home," you mean California? A. Yes.

I got back on KFWB, and then Tim went to work for the Safeway Stores, and the boys all busted up, and after I was on the Texas Outlaw show for a while, I got in touch with Tim and Bob Knowland, the other original part of the trio, and told them the situation, that we were on a good station and we might have a chance if we would get in there and work on it.

So Bob quit his job—he was caddying at the golf course at Bel-Air—and Tim quit his job, and we got us a boarding house up on Carlton Way, and holed up woodshedded songs.

In our next couple of years we learned—none of us read music, but we memorized—about a thousand songs.

Q. What were those years that you are talking about now, Mr. Rogers?

A. That is '34, '35.